TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923

No. 125

C. J. ERICKSON AND UNITED STATES FIDELITY AND GUARANTY COMPANY, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES OF AMERICA AND UNITED STATES SPRUCE PRODUCTION CORPORATION.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON.

FILED SEPTEMBER 22, 1922.

(29,156)

(29,156)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 606.

C. J. ERICKSON AND UNITED STATES FIDELITY AND GUARANTY COMPANY, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES OF AMERICA AND UNITED STATES SPRUCE PRODUCTION CORPORATION.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 16, 1922.

1 *Names and Addresses of Counsel.*

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Carey & Kerr and Omar C. Spencer, Attorneys for Defendant in Error United States Spruce Production Corporation, 1410 Yeon Building, Portland, Oregon.

2 In the United States District Court for the Western District of Washington, Northern Division.

No. 6331.

UNITED STATES OF AMERICA and UNITED STATES SPRUCE PRODUCTION CORPORATION, a Corporation, Plaintiffs,

vs.

C. J. ERICKSON and UNITED STATES FIDELITY AND GUARANTY COMPANY, a Corporation, Defendants.

Complaint.

Plaintiffs for cause of suit allege:

I.

This is a suit arising under the Constitution and laws of the United States. The United States Spruce Production Corporation is a corporation organized under and pursuant to certain acts of Congress under the laws of the state of Washington as a corporation of that state. The defendant, C. J. Erickson, is a citizen of the state of Washington, and a resident of the Western District of Washington, Northern Division. The defendant, United States Fidelity and Guaranty Company, is a corporation organized under the laws of the state of Maryland, and a citizen of that state. The matter in dispute herein exceeds the sum of $3,000.00 in amount, exclusive of interest and costs. The United States of America joins as plaintiff to protect its interests.

II.

During the times herein mentioned the plaintiff, United States Spruce Production Corporation, was and now is a corporation created under the laws of the state of Washington by the Director of Aircraft Production under and pursuant to the Act of Congress
3 of July 9, 1918, amending the Act of April 11, 1918 (U. S. Compiled Statutes 1919, Compact Edition, Appendix page 1771), for the purposes hereinafter more fully set forth, and was duly licensed and authorized to transact business in the state of Washington and had in all respects complied with the laws of that state entitling it to transact business therein.

III.

Under and pursuant to certain Acts of Congress, particularly the Act of June 3, 1916 (Chap. 134, 39 Statutes 166 at page 213, Sec. 120), the Act of Congress of March 4, 1917 (Chap. 180, 39 Statutes 1192), and the Act of Congress of July 24, 1917 (Chap. 40, 39 Stat. page 243, Sec. 9), and other enactments, the President of the United States authorized the purchase and acquisition of spruce and fir lumber, among other commodities, as war material, and authorized the construction of aircraft for use in the navy and in the army of the United States within the amount of appropriations and in compliance with the terms of said Acts. Through the War Department and under the direction of the Chief Signal officers of the United States Army plans were made for the production of such war material, including the building of the railroad hereinafter mentioned.

IV.

By the above mentioned Act approved July 24, 1917 authority was given to the President acting through the War Department during the existing emergency occasioned by the state of war between the United States and the Central European powers for the purchase, manufacture, maintenance, repair and operation of airships and other aerial machines, including the acquisition and development of plants, factories, and establishments for the manufacture
4 of airplanes, aircraft, machines and appurtenances, the purchase of raw and semi-finished materials therefor, and of all other things necessary for creating and extending the production of airplanes, aircraft, engines, and all other appurtenances, and the sum of $640,000,000.00 was appropriated for the purpose of carrying on the said operations and to put said Act into effect. Under the provisions of the Act of Congress approved March 4, 1917 (Sections 3115 1/16*a*, 3115 1/16*b*, 3115 1/16*c* and 3115 1/16*d*, U. S. Compiled Stat., Compact Ed.), the President was authorized and empowered, within the limit of funds appropriated therefor, to requisition for the use of the government during the war emergency war materials and plants for the production of war materials, which included arms

armament, ammunition, stores, supplies and equipment for ships and airplanes and everything required for or in connection with the production thereof, and was authorized to exercise the power and authority so vested in him and to expend the money appropriated by means of and through such agency or agencies as he might determine upon from time to time. By the Act of Congress approved April 11, 1918, as amended by the Act of Congress approved July 9, 1918, the Secretary of War was authorized to acquire by condemnation lands and interests in lands for military purposes, including standing or fallen timber, sawmills, camps, machinery, logging roads, rights of way, equipment, materials and supplies, and any works, property or appliances suitable for the effectual production of such lumber and timber production. The said last mentioned act further provided that when the owners of such land, interest and rights appurtenant thereto should fix a price for the same which in the opinion of the Secretary of War would be reasonable he might purchase or enter into a contract for the use of the same at such price without further delay.

V.

Accordingly, the government of the United States in the then existing war emergency, under the direction of the President and Secretary of War, being in need of spruce, fir, and other lumber for the manufacture and production of such war material, especially aircraft, and in order to facilitate the production of such lumber products, undertook the construction of certain logging railroads in the states of Washington and Oregon for the transportation of such lumber products as would be required in the manufacture of aircraft and for other purposes. These operations were originally begun by the Signal Corps, Aviation Section of the United States Army, and later by the Bureau of Aircraft Production, Spruce Production Division of the United States War Department, these being the agencies through which the powers vested in the President of the United States and the Secretary of War under the foregoing Acts of Congress were exercised. Among other logging railroads so constructed was the logging railroad hereinafter described, known as Spruce Production Railroad No. 1, in Clallam County, in the state of Washington.

VI.

For the purposes aforesaid and under said Acts of Congress, the United States, acting through the Signal Corps of the United States Army, entered into a contract with contractors for the construction of the railroad hereinafter described, and for the acquisition of rights of way therefor. Nearly all of the right of way and lands acquired for that railroad were acquired through such contractors who also performed the work, or nearly all of the work, of constructing said logging railroad. Afterwards, however, and prior to the signing of the Armistice in the war already mentioned, all of these properties were transferred to the United States

Spruce Production Corporation, and additional rights of way were acquired by that corporation, and additional work upon the said railway line was done by that corporation. The said railroad was constructed upon a route located and designated by the United States government and the said railway line, with its rights of way and appurtenances, as built and constructed, was built for and acquired by and became the property of the United States, although the title thereto was transferred to the plaintiff corporation and still is carried in the name of the United States Spruce Production Corporation for convenience.

VII.

At the time of the Armistice the work of getting out the war material above mentioned was mostly suspended by the government, but some operations necessarily continued for a period of months after that date. The United States Spruce Production Railroad No. 1 was then nearly completed and some work was thereafter done by the United States Spruce Production Corporation, plaintiff, under the direction of the War Department to put it in operating condition. This railroad was approximately thirty-six miles in length, beginning at a point of connection with Seattle, Port Angeles and Western Branch of the Chicago, Milwaukee and St. Paul Railway at Disque Junction in the county of Clallam, state of Washington, and extending thence in a general westerly direction to a point at or
7 near Lake Pleasant in said county. For several miles of the route of the said railway line it was built upon the public lands of the United States in the Olympic Forest Reserve, under the jurisdiction of the Department of Agriculture, Forestry Service, with the approval of the Secretary of Agriculture. Under the terms and conditions of the permit authorizing the construction thereof upon such last mentioned lands it was necessary to comply with certain requirements as to clearing the right of way of the railroad of logs, brush and debris causing fire hazard for the necessary protection of the forests in the said reserve and the timber privately owned in the vicinity of the said railroad.

VIII.

By the provisions of the Act of Congress approved July 9, 1918, the Director of Aircraft Production of the United States government was authorized, whenever in his judgment it would facilitate the production of aircraft, aircraft equipment or material therefor, for the United States and the governments allied with it in the prosecution of the war, to form under the laws of the District of Columbia, or under the laws of any state, one or more corporations for the purchase, production, manufacture and sale of aircraft, aircraft equipment, or materials therefor, and to build and operate railroads in connection therewith; said Director being further authorized to acquire on behalf of the United States the capital stock and securities of any corporation so formed by him. The provisions of that Act further authorized the Secretary of War, acting through the Director

of Aircraft Production, to transfer by appropriate instruments to any such corporation as might be formed thereunder any interest of the United States in any existing contracts for aircraft, aircraft equipment, or materials therefor, and the title in land, railroads, or equipment used in or in connection with the production of aircraft, aircraft equipment or materials therefor, on such terms as the Secretary of War, acting through the Director of Aircraft Production, should deem fit. Pursuant to the authority of that Act of Congress the Director of Aircraft Production caused to be formed under the laws of the state of Washington the plaintiff corporation, known as United States Spruce Production Corporation.

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IX.

The incorporators of the said corporation were officers of the United State Army and in so incorporating they acted for and in behalf of the United States of America. All of the shares of the corporation, except qualifying shares, were subscribed by the Director of Aircraft Production. All of the capital used by the corporation in its operations was furnished by the United States Government. The qualifying shares were taken in the name of the trustees of the corporation, who from time to time have held one share each to qualify them to serve in that capacity, but none of the said trustees has any interest in the corporation, and each of the trustees holds the shares of stock standing in his name solely as representative of and for the use and benefit of the United States. Each of the trustees has in writing assigned to the Secretary of War, for the benefit of the United States, any and all moneys, profits or dividends that might accrue upon the stock held by him, and each has certified that the share of stock standing in his name was issued solely for the purpose of qualifying him as trustee of the corporation. No dividends are payable to or have been paid to the stockholders, and the trustees have received no compensation except for services rendered otherwise than as trustees. Some time after organization, on the advice of the Director of Aircraft Production, the articles of incorporation were so amended as to confine the powers thereof to those mentioned in the foregoing Act of Congress of July 9, 1918, Chapter 16, entitled, "An Act Making Appropriations for the Support of the Army," etc., and upon the advice of the Director of Aircraft Production, the by-laws of the corporation were so amended that the trustees were made removable by a majority of the outstanding shares, so that, as the government has all but the qualifying shares, the several trustees are removable by the government at will. At all times since the organization of the corporation the president thereof has been an officer of the United States Army, and during its activities nearly all of the officers and agents were officers of the United States Army, or enlisted men thereof. Two of the four trustees are at present officers of the United States Army, specially assigned to such duty. Nearly all of the men employed in the building of the railroad were of the United States Army, and all acts of the trustees, the officers and agents of the corporation, have at all

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times been performed under the direction of and in accordance with the instructions of the Secretary of War or the Chief of Air Service, or the Director of Aircraft Production. The work undertaken by the corporation, as herein described was planned by the Director of Aircraft Production, who reported the same to the Secretary of War, who gave his approval thereof, and after the organization of the corporation as herein described there was transferred to the corporation by the said officers all contracts between the United States and others for the production of such war material and for the construction of the railroad, and the property has ever since been held
10 under their directions pursuant to the said Acts of Congress, and said corporation is an agency, arm, or instrumentality of the United States, and upon liquidation of its assets, pursuant to the terms of the said Acts of Congress, all of the proceeds thereof will be paid into the treasury of the United States and no one will receive any profit or dividend therefrom. The said corporation is not engaged in commercial business, nor has it ever engaged in any other business save as herein stated. No person, firm, or individual has any interest, right, title or estate in or to any shares of stock of that corporation, or in or to any property owned or held by that corporation, and all of its functions as a corporation are carried out in the manner described for war purposes of the United States.

X.

After the Armistice the corporation remained in the possession of said Spruce Production Railroad No. 1, and upon the right of way thereof were certain down or fallen fir, spruce, cedar and hemlock logs, cut from timber originally growing upon the right of way of the said railroad and then lying along and adjacent to the said right of way, and the plaintiffs were desirous of selling and disposing of said logs to the defendant Erickson and were willing to allow the said defendant the privilege of operating the said railroad for the purpose of picking up and hauling the said logs to the defendant's sawmill, which the defendant owned, near Port Angeles, Clallam County, Washington. Thereupon and on or about the 24st day of April, 1919, the plaintiff corporation in order to have the right of way cleared in compliance with the requirements of the De-
11 partment of Agriculture, Forestry Service, herein mentioned, and in order to minimize fire hazard, entered into a contract with said defendant, a copy of which is hereto attached and marked Exhibit "A." This contract is generally designated as Contract No. S. P. C.—358 and is so referred to in this complaint for convenience.

XI.

In and by the said contract the said defendant was designated as the "Contractor," and the plaintiff corporation was therein referred to as the "Corporation." By the terms thereof the Contractor agreed to purchase all down or fallen fir, spruce, cedar and hemlock logs of

the minimum dimensions of nine feet in length with four inches sawing allowance, and having a diameter of sufficient thickness to insure a reasonable commercial sawing yield or value, owned by the Corporation and lying within one thousand feet of the western end of the aforesaid railroad and west of the second or westerly tunnel thereof and along and adjacent to and felled on the right of way of said railroad, and the Corporation agreed to sell the said logs to the Contractor in accordance with the terms and conditions set out in the contract, reference to which is hereby made for greater particularity. By the terms of the contract, among other things, the Contractor agreed to supply the necessary rolling stock equipment, including locomotives, logging trucks, cars and other equipment, and to operate the said railroad in accordance with the terms and conditions provided therein and agreed to pay certain specified prices for the logs purchased by him, as in the said contract more particularly set forth, and also agreed to pay for the use of the railroad for hauling logs thereon purchased from other parties, or supplies other than for the said Contractor, or the United States
12 Forestry Service, $3.50 per car. Payment was therein agreed to be made by the Contractor within ten days of presentation of invoice and scale showing logs delivered and the Contractor agreed to remit to the Corporation in full payment for said logs so delivered according to the prices and scales provided in the said contract, and also agreed that within ten days of the end of each month during the life of the contract he would remit to the Corporation the amount due for the use of the railroad in hauling the logs and supplies, other than for logs and supplies owned by the Corporation as therein provided. For the purpose of assuring the plaintiff corporation that such payments would be made the defendant Erickson agreed to maintain on deposit with the plaintiff corporation at its direction not more than $4,000.00, which sum when so deposited might be applied by that corporation in making payments past due and unpaid by the Contractor thereunder. Provision was made in the contract for scaling and measuring the logs and the Contractor guaranteed and assured the Corporation that he would have hauled and taken delivery of all of the aforesaid logs of the Corporation over the said railroad and have paid for the same according to the method described therein within one year from the date the Corporation should turn over the railroad to the Contractor for operation thereunder.

XII.

In and by the said contract the defendant Erickson agreed, among other things, that he would immediately put the road bed of the railroad in operating condition for the use of the Contractor, in the manner described in the said contract; also that he would assume and pay all handling, maintenance and other costs, charges and expenses arising from the operation of the railroad, properties and appurtenances and protect and save harmless the Corporation
13 from any liability for payment of the same, as in the said contract more fully set forth. He also agreed to furnish to

the Corporation a surety bond as therein described in the penal sum of $20,000.00, conditioned upon his full and faithful performance of all matters, things, terms and conditions prescribed therein. Certain other details of the said contract, as far as material to this action, will be seen from an inspection of the said Exhibit "A."

XIII.

After the execution and delivery of the said contract, on or about the 2nd day of May, 1919, the defendant Erickson furnished a surety bond as provided for therein and the plaintiff corporation turned over the railroad about that time to him for operation in accordance with the contract. The defendant Erickson thereupon entered upon the performance of the contract and thereafter cut and removed a part of the logs agreed by him to be purchased thereunder, but he failed to comply with the terms of the contract, although the plaintiff corporation complied with the contract on its part.

XIV.

Shortly after the defendant Erickson began the performance of the contract S. P. C.—358, to wit, August 14, 1919, it was agreed between the plaintiff corporation and the said defendant that the contract should be modified and the said defendant should pay at the rate of 50¢ per thousand feet, board measure, upon logs purchased by him from parties other than the said corporation, and moved by him over the railroad, in lieu of the payment of $3.50 per car, as in the contract provided. This modification was made to apply from the date of the contract S. P. C.—358, but
14 the said defendant failed to make payment for any such freight, although he hauled said logs on the said railroad.

XV.

Before the defendant Erickson completely performed the contract S. P. C.-358, to wit, July 30, 1920, a supplemental contract was made by and between the plaintiff corporation and the said defendant Erickson, whereby the said defendant agreed to purchase from the said Corporation certain additional logs, timber and forest products situate upon Section 35, Township 30 North, Range 13 West, Willamette Meridian, which, for the purposes of the supplemental contract, were called and are herein described as the "Prairie Logs." The supplemental contract was marked for convenience "S. P. C.-470," and is so referred to in this complaint. A copy thereof is hereto attached and marked Exhibit "B." In the supplemental contract the logs, which were the subject matter of the previous contract S. P. C.-358, were designated and are herein referred to for convenience as the "Right of Way Logs."

XVI.

By the supplemental contract it was agreed, among other things, that the original contract S. P. C.-358 should be extended to and including the 1st day of January, 1921, with certain modifications, but except as expressly modified by the supplemental contract, all of the terms, conditions and provisions of the original contract should remain in full force and effect.

XVII.

By the terms of the supplemental contract, Paragraph 3, Section a, of the original contract was so modified that the said Erick-
15 son, named as the Contractor therein, agreed to pay to the said Corporation for all Right of Way Logs in contract S. P. C.-358 agreed to be bought and sold, at the rate of $7.20 per thousand feet, board measure, for all fir, spruce and cedar logs, and at the rate of $3.00 per thousand feet, board measure, for all hemlock logs, and this change in price should become effective from and after the execution of the supplemental contract July 30, 1920.

XVIII.

By the supplemental contract the defendant Erickson agreed to purchase, and the plaintiff corporation agreed to sell each month one million feet, board measure, of the said Prairie Logs, at the same prices as are mentioned in Paragraph XVII hereof, and said Erickson agreed to deposit with that corporation an advance payment on the 1st day of each and every month during the life of the supplemental contract $5,000.00 to be applied as an advance payment on one million feet of logs to be taken during the month, the payment to be made whether the Prairie Logs had been removed by the Contractor or not. A method of accounting and adjustment was fixed by the terms of the supplemental contract.

XIX.

By the provisions of the supplemental contract the defendant Erickson agreed with the plaintiff corporation that he would not remove a greater amount of Prairie Logs than one million feet during any month, unless one million feet of Right of Way Logs should have likewise been removed, and that nothing in the said supplemental contract should relieve the Contractor of the requirement to pay in advance to the plaintiff corporation, on the 1st day
16 of each and every month, the sum of $5,000.00 as consideration for one million feet of Prairie Logs, as in the said supplemental contract provided, whether such logs should have been removed or not. But the said defendant failed and neglected to perform this part of the contract.

XX.

In and by the supplemental contract the defendant Erickson further agreed to clear up three miles of right of way of the said railroad and to place the same in proper condition and to the satisfaction of the plaintiff corporation and the representatives of the Forestry Service, Department of Agriculture of the United States, or of the Fire Warden of the state of Washington, as their jurisdiction might appear.

XXI.

By the terms of the supplemental contract it was agreed that in lieu of provisions of the original contract, whereby by Contractor had assumed liability for deferred maintenance upon the said railroad, the cost of carrying on such work and placing the road bed in proper condition was fixed as between the parties at $1,500.00 and the said Erickson was relieved from the liability in that respect on the payment of $1,500.00 to the plaintiff corporation. He subsequently paid this amount and was relieved from liability therefor.

XXII.

By the provisions of the supplemental contract the plaintiff corporation agreed to extend the operation of Paragraph 6 of the original contract in the manner following: that corporation agreed to move promptly with its own motive power, when such motive power would be available, all empty cars and cars loaded with materials, supplies and equipment for the Contractor for the purposes
17 of the supplemental contract from the junction of Spruce Production Railroad No. 1 with Chicago, Milwaukee and St. Paul Railroad at Joyce, Washington, to the nearest siding east of the Contractor's front of operations, and to return loaded cars from such siding, or from the east front of the Contractor's operations to the said junction at Joyce, Washington. The Contractor agreed to pay to the Corporation at the rate of 20¢ per car mile for each car so moved. It was also therein provided that in the event the Contractor should desire to move empty cars, cars of equipment or supplies, or cars loaded with logs from Joyce, Washington, to the seat of his operations and return, with his own motive power, arrangements for such operations by the Contractor were required to be made upon the special written permission of the plaintiff corporation's superintendent upon the ground, and in case of such operations under the Contractor's own motive power, the Contractor agreed to pay the Corporation at the rate of 7½¢ per car mile for each car so moved over the said railroad. For the purpose of computing such payments each locomotive should be considered as equivalent to three cars, and each steam shovel should be considered as equivalent to two cars. It was also provided that all sums earned as tariffs by the Corporation, as so provided, either

as charges for moving of Contractor's equipment and cars, or for track charges for the Contractor's operations, should be due and payable to the plaintiff corporation upon the 10th day of each month for the month immediately preceding.

XXIII.

By the supplemental contract the defendant Erickson agreed to furnish to the plaintiff corporation at the time of the execution thereof, and before the same should become effective, an ex-
18 tension of the surety bond hereinbefore mentioned, provided for in Paragraph 11 of contract S. P. C.-358, or in the alternative, to furnish a new surety bond with a surety or indemnity company duly authorized to execute such bond and satisfactory to the Corporation in the penal sum of $20,000.00, conditioned upon the full and faithful performance by the Contractor of all of the matters, terms and conditions of the said supplemental contract and of the extension of contract S. P. C.-358 in the manner and within the time limits of the said contracts. Accordingly, on the execution of the said supplemental contract the said defendant Erickson furnished a new surety bond, a copy of which is hereto attached marked Exhibit "C," in the penal sum of $20,000.00, wherein the said C. J. Erickson was principal and the defendant United States Fidelity and Guaranty Company was surety, and the plaintiff United States Spruce Production Corporation was the obligee. The condition of the said bond was and is as follows:

"Whereas, the above bonded Principal, C. J. Erickson, has entered into a supplemental contract bearing the date of July 30th, 1920, with the United States Spruce Production Corporation, for the purchasing of certain cedar, spruce and hemlock logs, at prices listed in attached contract, together with the operation of a certain railroad, marked Exhibit A, and made a part hereof, and,

"Whereas, one of the conditions of said contract is that the said C. J. Erickson shall furnish a bond in the sum of Twenty Thousand and No 100 ($20,000.00) Dollars, guaranteeing the faithful performance of said contract.

"Now, therefore, if the above bonded Principal, C. J. Erickson, in all matters and things, shall comply with the said contract according to the terms and conditions of same and shall make due and prompt settlement for such logs and operate such railroad as provided for in said contract, then this obligation shall be void, otherwise to remain in full force and effect."

19 The bond was duly executed by the defendants C. J. Erickson and United States Fidelity and Guaranty Company, and the requisite United States Document stamps were affixed and cancelled, and the bond was duly delivered to the plaintiff, United States Spruce Production Corporation, and still remains in full effect and undischarged. The said defendant C. J. Erickson, as herein shown, has failed to comply with his contract therein referred to, which is the same contract herein described and which is at-

tached to this complaint as Exhibit "B" thereof, and has failed to make due and prompt settlement for the logs therein mentioned or to operate the railroad as provided in the said contract, all of which more fully appears by the allegations of this complaint.

XXIV.

After the execution of the supplemental contract the defendant Erickson entered upon the performance thereof and he cut and removed both Prairie Logs and Right of Way Logs which were scaled and measured and classified in accordance with the said contracts, but he failed, neglected and refused to pay for the same as provided in the said contracts. The total amount of Right of Way Logs purchased by the said defendant Erickson and received and moved by him pursuant to the said contracts and at the prices therein named was $50,731.06. The total amount of Prairie Logs purchased by the said defendant Erickson and received and moved by him pursuant to the said contracts and at the prices named therein, was $43,792.34. Under and pursuant to the said contracts the plaintiff corporation performed train service for the defendant Erickson at the rates in the said contracts provided, aggregating the sum of $12,012.17. The defendant Erickson made use of the said railroad for hauling logs purchased from other parties, and supplies for other parties than for the said Contractor or the United States Forestry Service, as provided in the said contracts, at $3.50 per car, to an amount aggregating $4,246.45. The defendant Erickson also failed, neglected and refused to clear three miles of the right of way of the said railway line, or any thereof, as required by the terms of the said supplemental contract S. P. C.—470, although the location of the said three miles of right of way so to be cleared and cleaned of the debris and combustible matter, as provided therein, was determined and designated by the Corporation as in the said supplemental contract required, and although written demand was made upon said defendant by the Corporation as therein provided, whereby and by reason whereof the plaintiffs have suffered special damage in the sum of $5,968.65. The total amount of the said items herein enumerated was and is, to wit, $116,750.67.

XXV.

The defendant Erickson paid $6,946.21 upon the Right of Way Logs purchased, and $17,849.56 upon the Prairie Logs purchased, and during and prior to the operations under the contracts herein mentioned, there were other dealings between the plaintiff corporation and said defendant, both debit and credit, as a result of which there remained a balance due from the plaintiff corporation thereon aggregating, to wit: $35,275.55, which has been applied by the plaintiffs as a credit to the said defendant upon the amounts due under the said contracts herein mentioned. A detailed statement of the items so credited and applied is hereto attached, marked Exhibit "D," and made a part hereof. The aggregate amount of said pay-

ments and credits amount to, to wit: the sum of $60,071.32, leaving a balance due, owing and unpaid of $56,679.35. The defendant Erickson has failed, neglected and refused to pay said balance
21 or any part thereof.

Wherefore, the plaintiffs pray judgment against the defendant C. J. Erickson in the sum of Fifty-six thousand six hundred seventy-nine *dollars* and 35/100 ($56,679.35) Dollars, and against the defendant United States Fidelity and Guaranty Company in the sum of Twenty thousand ($20,000.00) Dollars, of the aforesaid $56,-679.35, and for the costs and disbursements of this action.

ROB'T C. SAUNDERS,
U. S. Dist. Atty.;
F. C. REAGAN,
Asst. U. S. Dist. Atty.;
CAREY & KERR,
Attorneys for Plaintiffs.

22 STATE OF OREGON,
County of Multnomah, ss:

I, Max Church, being first duly sworn say, that I am the secretary of United States Spruce Production Corporation, one of the plaintiffs herein mentioned; that I have read the foregoing complaint and know the contents thereof and the same is true as I verily believe.

MAX CHURCH.

Subscribed and sworn to before me this 10th day of September, 1921.

[Notarial Seal.]

G. C. FRISBIE,
Notary Public for Oregon.

My Commission expires Aug. 4/24.

23 EXHIBIT "A."

Contract No. SPC—358. 5/1/19.

File No. 318.

United States Spruce Production Corporation.

Logging Contract.

This contract agreement, made at Portland, Oregon, dated the 21st day of April, 1919, between the United States Spruce Production Corporation, a Washington Corporation, which corporation was formed by direction of the Director of Aircraft Production of the United States pursuant to the provisions of Chapter 16 of an Act of Congress entitled "An Act Making Appropriation for the Support of the Army, etc.," approved July 9, 1918, hereinafter referred to as

the "Corporation," and C. J. Erickson, of Seattle, Washington, hereinafter referred to as the "Contractor," Witnesseth:

Whereas, the Corporation is the owner of certain down or fallen fir, spruce, cedar and hemlock logs cut from timber growing on right of way of Spruce Production Railroad No. 1, which logs are now lying along and adjacent to said right of way, and Corporation is desirous of selling and disposing of said logs to Contractor, and

Whereas, the Corporation owns and controls Spruce Production Railroad No. 1, hereinafter called the "Railroad," as said railroad is now established and constructed extending from that junction point or station called Disque on the Seattle, Port Angeles & Western Railroad, to a point near Lake Pleasant, all in Clallam County, Washington, which railroad Corporation is desirous of allowing Contractor to operate for the purpose of picking up and hauling said logs so purchased to Contractor's sawmill, and

Whereas, the Contractor owns and controls a sawmill near
24 Port Angeles, Clallam County, Washington, which sawmill is served by the said Seattle, Port Angeles & Western Railroad and said Spruce Production Railroad No. 1, connection with the latter being made over that portion of the said Seattle, Port Angeles & Western Railroad between Contractor's said sawmill and the junction or station of Disque, all in Clallam County, Washington, and

Whereas, Contractor is desirous of purchasing said down or fallen timber or logs owned by the Corporation as aforesaid and of operating said railroad for the purpose of hauling the said logs to his mill as aforesaid.

Now, therefore, for and in consideration of the premises and of the mutual promises and agreements of the parties hereto, it is agreed as follows:

1. Contractor agrees to purchase all down or fallen fir, spruce, cedar and hemlock logs, of the minimum dimensions of nine feet in length, with four inch sawing allowance and having a diameter of sufficient thickness to insure a reasonable commercial sawing yield or value, owned by the Corporation and lying within 1,000 feet of the Western end of railroad and West of the second or westerly tunnel thereof, and along and adjacent to and felled on the right of way of said railroad, and Corporation agrees to sell said logs to Contractor in accordance with the terms and conditions hereinafter set forth.

2. The Contractor agrees to supply the necessary rolling stock equipment, including locomotives, logging trucks, cars and other equipment and to operate said railroad in accordance with the terms and conditions hereinafter provided, and the Corporation agrees to allow Contractor the use of said railroad as the same is now constructed in accordance with the terms and conditions hereinafter provided.

3. Contractor agrees to pay Corporation for said logs and for the use of said railroad as follows:

A. A minimum rate or price of $4.00 per 1,000 ft. B. M.
25 for all fir, cedar and spruce logs, and $2.00 per 1,000 ft. B. M. for all hemlock logs. It is understood the above minimum prices are arrived at by assuming the following arbitrary price and grades as a base; a selling price of fir logs rafted and ready for delivery in Puget Sound for Grades 1, 2 and 3 at $18.00, $15.00 and $12.00 M. B. M. respectively, and for such log rafts assumed to yield or grade 20% of Grade 1, 60% of Grade 2 and 20% of Grade 3, said assumed price and grade thus netting an average price for fir of $15.00 M. B. M. Should the current prices for fir logs rafted and ready for delivery in Puget Sound log market as quoted by "The Timberman," a monthly publication printed at Portland, Oregon, and issued on the 15th day of each and every month, show in any one month an increase over said arbitrary or base prices for fir, then Contractor shall pay Corporation during that month fifty (50%) per cent of such increase figured according to the above assumed grade, in addition to said minimum prices, it being understood said fir prices will govern additions to the minimum prices of spruce and cedar as well as fir, and further that the prices quoted in "The Timberman" shall prevail for the entire month in which same are published.

B. For the use of said railroad for hauling logs purchased from other parties, or supplies for parties other than for Contractor, or United States Forest Service, $3.50 per car.

C. Contractor shall within ten days of presentation of invoice and scale showing logs delivered, remit Corporation in full payment for said logs so delivered according to the prices and scales herein provided, and shall within ten days of the end of each month during the life of this contract, remit Corporation the amount due for use of said railroad in hauling logs and supplies other than for logs and supplies owned by Corporation, as hereinbefore provided. For
26 the purpose of assuring Corporation that such payments will be made as aforesaid, Contractor agrees to maintain on deposit with Corporation at its direction, not more than $4,000.00, which sum when so deposited may be applied by Corporation in the making of payments past due and unpaid by Contractor hereunder.

4. All scaling provided for in this contract shall be in accordance with the Spaulding Log Scale. All logs purchased by Contractor from Corporation shall be scaled by scalers designated by Corporation and be scaled on the log deck of the Contractor's mill, or mill pond or booming grounds where the logs are assembled and rafted for delivery to sawmill. All Corporation's logs shall be marked before being removed from the woods with a suitable brand to show Corporation's ownership. In arriving at the quantity of timber taken and to be paid for by Contractor hereunder the entire merchantable contents of the logs shall be computed. Merchantable timber hereunder shall include No. 1, 2 and 3 logs graded according to the present rules, methods and standards of the Puget Sound Logging & Scaling Bureau, with the exception that the said rules, method and

standard shall be extended to include nine foot logs and all logs shall be measured in multiples of one foot.

5. Contractor guarantees and assures Corporation *is* shall have hauled and taken delivery of all Corporation's logs as aforedescribed over said railroad and paid for same according to the method above described within one year from the date of Corporation turning railroad over to Contractor for operation hereunder.

6. Contractor agrees that he will at all times exercise the utmost care in the distribution and disposition of the debris and inflammable matter left or remaining from the operations under this contract so that the same shall not become a fire hazard, it being
27 understood Contractor shall for the purpose of complying with the above assist and follow the directions of the Washington State Fire Warden and of the Forest Ranger of the United States Forest Service in charge of this district, and to this end agrees to haul all supplies offered to him over said railroad by the United States Forest Service for the purpose of clearing up possible fire hazard along right of way of said railroad. It being further understood, however, that movements of cars carrying such supplies will be subject to the regular movement of log trains and that Contractor shall have the right to charge said United States Forest Service for such hauling at the rate of twenty (20¢) cents per car mile.

7. Corporation agrees to immediately put the roadbed of said railroad into an operating condition for the uses of Contractor, and Contractor agrees, upon said railroad being turned over to him for operation, to keep and maintain the same in operating condition particularly as to alignment and surface and that he will repair said roadbed as need therefor arises from time to time with gravel of good quality, or other similar authorized material, in order that said roadbed will at all times be adequate and sufficiently safe for reasonable speed and load, and further agrees to pay for any damages caused to rail through surface bending, installation of switches, line bends, or otherwise, as a result of Contractor's acts or negligence in the maintenance or operation, and to return and deliver back to Corporation or its assigns said railroad at the expiration of this agreement in as good condition as it was at the time of his taking possession thereof for operation under this contract, reasonable wear, tear and depreciation excepted. It being further understood that Contractor will in all matters pertaining to the maintenance, care and operation of this railroad conform to and carry out the
28 directions of the supervisor appointed by the Corporation to inspect and have charge of the maintenance of said railroad, and shall in all matters and things comply with the terms and provisions of the statutes of the State of Washington governing the operation of said railroad.

8. Contractor agrees to furnish a proper list to Corporation of all cars and equipment used by him in the operation of said railroad, together with any additions thereto as occur from time to time, and

that he will enter into negotiations with the Seattle, Port Angeles & Western Railroad in his own name providing for the necessary connections over the branch line of the said Seattle, Port Angeles & Western Railroad, and that he will protect and save harmless the Corporation from any injury, liability, damages or claims which may, might or could occur from the use of said railroad or from the use of the railroad facilities owned by said Seattle, Port Angeles & Western Railroad and used by Contractor.

9. Contractor agrees to assume and pay all the handling, maintenance and other costs, charges and expenses arising from the operation of said railroad properties and appurtenances and shall protect and save harmless the Corporation from any liability for payment of same, together with liability for all claims and injuries to property or persons, whether employees of Contractor or otherwise, and agrees to maintain said railroad in running order at all times, repairing the same as demand therefor arises, it being understood Contractor shall repair at his own expense all injury caused to said railroad by Acts of God, strikes, storms, fire or other damages arising either from causes beyond the control of Contractor or otherwise, as soon as it is reasonably possible to repair same, consideration being had in all cases to the seasonableness of the weather for making such repairs, it being understood Contractor shall be entitled to an extension of time for hauling as provided in Paragraph 5 hereof equal to the time required to repair damages arising from causes beyond control of Contractor. It being understood Contractor shall at all times exercise the necessary care and precaution to provide for necessary side and over-head clearances of all structures or tunnels on said railroad and does assume the obligation and responsibility that any or all loads hauled over railroad do not exceed or over-tax the capacity of such structures or tunnels. It being understood Contractor shall at the time of delivering said railroad back to Corporation or to its assignee convey by proper deed and satisfactory title all essential betterments constructed or added to said railroad.

10. It is the principal intention of this contract that Contractor shall purchase and haul to his mill logs owned by the Corporation which are now down and felled in the immediate district served by said railroad, however, Corporation agrees that Contractor may purchase and haul any logs owned by other parties lying in the immediate district served by said railroad, paying Corporation for the hauling of said logs according to the terms set forth in Sub-paragraph B of Paragraph 3 above, it being provided, however, Contractor shall not purchase or haul, or contract for the purchase or hauling of any logs felled as the result of new operations instituted subsequent to the date of this contract, either by Contractor or others without first having or obtaining the written consent and approval of the Corporation to such contracts, purchases or arrangements for hauling. It being further understood Corporation reserves the right at the time of approving such contracts to direct the proper terms which shall govern the hauling rate for use of said railroad. In

this connection Corporation has released certain fallen timber to owners along the so-called Calwa and Bockman Creek Spur Systems and it is contemplated Contractor may or will purchase said fallen timber from said owners and to this end Contractor, under the direction and supervision of the Corporation, shall have the privilege after first having obtained the necessary rights from
30 property owners interested, to lay rail on graded portions of said Calwa and Bockman Creek Spur Systems and for this purpose use the ties owned by Corporation lying along said Spur Systems, it being further provided Contractors shall supply his own rail and equipment for this purpose and bear all cost, charges and expense arising from said construction and shall within one month of the expiration of this contract, either by cancellation or otherwise, remove said rail and equipment and deliver back to Corporation or its assigns such ties owned by the Corporation as may be used in the construction of such spur tracks, in the manner and place then designated by such Corporation or its assigns.

11. The Contractor shall at the time of execution of this contract furnish the Corporation with a surety bond with some Surety or Indemnity Company duly authorized to execute such bond and satisfactory to Corporation, in the penal sum of Twenty Thousand ($20,000.00) Dollars, conditioned upon the full and faithful performance by the Contractor of all the matters, things, terms and conditions of this agreement in the manner and within the time limits herein provided.

12. Corporation agrees to allow, in conjunction with the United States Forest Service and Corporation, at all times during the life of this agreement, the joint and free use of the telephone lines and system constructed by Corporation along said railroad and used in connection therewith. It being understood that Contractor shall maintain said telephone system in working order, making repairs thereto as may be necessary from time to time and will return said telephone system at the expiration or cancellation of this contract to Corporation in as good order as the same was in at the time of its being taken over by Contractor, free from liens, obligations and expense incident to connection with other lines during period
31 or operation or otherwise, and that this telephone system and its usage shall in all matters and things be under the supervision of the Corporation's supervisor, as in case of the railroad as hereinbefore provided.

13. Contractor agrees that he shall not operate this railroad in any way whereby the same may become a common carrier within the meaning of the laws of the State of Washington, and shall haul or transport no passengers over this road for hire, without first having and obtaining the written consent of the Corporation thereto.

14. Corporation reserves the right at all times and upon reasonable notice to go upon said railroad and operate a train over the same for the purpose of inspection, showing said railroad property to possible purchasers, or otherwise.

15. Corporation reserves the right during the life of this contract to advertise said railroad for sale and to sell the same and in this connection to assign all its right, title and interest in and to this contract to any person or persons it may desire, it being understood at the time of any such sale this contract and any or all its terms may be adjusted by Corporation to meet the demands or requirements of any such purchaser.

16. Corporation reserves the right at anytime during the life of this agreement to enter into negotiations with any third parties it may desire for the use of said railroad properties, it being understood that any arrangements made with said third party or parties shall be subject to all the rights and benefits of the Contractor, that is to say, no arrangement other than a sale or transfer by Corporation of said railroad shall be entered into by this Corporation which shall prevent, during the ordinary working hours, the Contractor from operating his equipment on right of way as needed in his operation or of the right to remove or haul such logs, it being understood, however, that Corporation shall be the sole judge of whether or
32 not any contract made with third parties shall so deprive, hamper or interfere with Contractor's operations hereunder; It being further provided that in case Corporation enters into a contract with third parties for the use of said railroad, said third parties shall bear their share of the expense of maintenance and upkeep of said railroad bed which shall be proportionate to the amount of such *such* third parties make of such railroad as such use bears to the total use put upon said railroad, that is to say, each operator using said railroad shall bear his share of the expense of maintenance as the amount of his or its traffic bears to the total traffic over said line, measured in each operator's car miles, and that this contract may at the time of execution of such contract or contracts with third persons, be adjusted accordingly.

17. Neither this contract nor any inter-st herein shall be transferred or assigned by the Contractor to any person, firm or company without the written consent of the Corporation, and in case of said transfer or sale without its written consent Corporation may refuse to carry out this contract either with the transferror or transferee, but any rights of action for breach of this contract by the Contractor are reserved by the Corporation.

18. Time is hereby declared to be the essence of this contract.

In witness whereof, the parties hereto have caused these presents to be duly executed the day and year first above written.

UNITED STATES SPRUCE PRODUCTION CORPORATION,
By C. T. STEARNS,
President,
[Corporate Seal.]
By JOHN P. MURPHY,
Secretary.
C. J. ERICKSON.

Witnesses:

W. M. T. CONLIN.
ROSE SHOPP.
J. P. MURPHY.
GEO. EGAN.

Approved as to form May 5, 1919.

J. P. MURPHY,
General Counsel.

Approved May 5, 1919.

G. B. HENNINGTON,
Manager Engineering Department.

Approved May 6, 1919.

WM. J. CONNIFF,
Acting Comptroller.

33 EXHIBIT "B."

Supplemental Contract SPC-470. 8/2/20.

File No. 318.

United States Spruce Production Corporation.

Supplemental Logging Contract.

This supplemental agreement, Made and entered into at Portland, Oregon, this 30th day of July, 1920, by and between United States Spruce Production Corporation, a Washington corporation, which corporation was formed by direction of the Director of Aircraft Production of the United States pursuant to the provisions of Chapter 16 of an Act of Congress entitled "An Act making Appropriation for the Support of the Army, etc.," approved July 9, 1918, hereinafter referred to as the "Cororation," and C. J. Erickson, of Seattle, Washington, hereinafter referred to as the "Contractor," Witnesseth:

Whereas, the parties heretofore, to wit, on the 21st day of April, 1919, entered into a contract for the logging of certain timber in Clallam County, Washington, said contract being numbered and named SPC-358, which logs and timber for the purpose of this supplemental agreement shall hereinafter be known as the "right of way logs," and

Whereas, Corporation is negotiating for the purchase of certain standing timber and down or fallen fir, spruce, cedar and hemlock logs in connection with the adjustment of certain claims against Corporation, said standing timber and fallen logs being located at "Lake Pleasant Prairie," in Clallam County, Washington, and on land now owned by Clallam Lumber Company, and more particularly described

as the southwest quarter (S. W. ¼) of Section thirty-five
34 (35), Township Thirty (30) North, Range, Thirteen (13)
West, Willamette Meridian, excepting the right of way of Spruce Production Railroad No. 1, and

Whereas, Contractor is desirous of entering into a supplemental contract with Corporation for the logging of said standing and fallen timber, in addition to the timber covered by said Contract SPC-358, such logs, timber and forest products situated on the said Section thirty-five (35), and which are the subject matter of this supplemental agreement, for the purposes of this agreement being known as the "prairie logs," and it is the mutual desire of the parties hereto to make certain amendments, adjustments and amplifications of said Contract SPC-358,

Now, therefore, this memorandum witnesseth: That in consideration of the premises and of the covenants and agreements of the parties hereto, it is mutually agreed as follows:

1. The operation of Contract SPC-358 shall be extended to and including the first day of January, 1921, and said contract shall remain in full force and effect in each and every respect unless sooner terminated, and the terms, conditions and covenants in said Contract SPC-358 contained shall in all respects govern and apply to the purchase of logs sold and delivered under this supplemental contract, except as in this supplemental agreement amended, but the execution of this sup-lemental agreement shall in no wise be deemed to terminate, invalidate or destroy the effect of said Contract SPC-358 except as herein amended.

2. Paragraph 3, Section *a*, of said Contract SPC-358 is hereby amended in the manner following, to wit: Contractor agrees to pay to Corporation for all right of way logs in Contract SPC-358 agreed
to be bought and sold at the rate of seven dollars and twenty
35 cents ($7.20) per thousand feet, board measure, for all fir, spruce and cedar logs, and at the rate of three dollars ($3.00) per thousand feet, board measure, for all hemlock logs, and this change in price shall become effective from and after the execution of this contract.

3. Contractor agrees to purchase and Corporation agrees to sell one million (1,000,000) feet, board measure, per month of said prairie logs in this supplemental contract agreed to be bought and sold at the same rate as the amended schedule for right of way logs, namely, seven dollars and twenty cents ($7.20) per thousand feet, board measure, for all fir, spruce and cedar logs, and three dollars ($3.00) per thousand feet, board measure, for all hemlock logs. Contractor shall deposit with Corporation as an advance payment for prairie logs on the first of each and every month hereafter during the life of this supplemental contract the sum of five thousand dollars ($5,000.00), which sum shall be an advance payment on one million (1,000,000) feet of logs, and such monthly payment of five thousand dollars ($5,000.00) shall be made by Contractor to Corporation

whether the said p-airie logs have been removed by Contractor or not.

An accounting shall be made at the end of each month, according to the prices and terms to be paid by Contractor for the various kinds of logs bought and sold, and if at the time of such accounting it shall appear that there is a sum due and owing to Corporation by reason of the respective value of the different classes of logs in excess of the sum of five thousand dollars ($5,000.00), then Contractor shall pay to Corporation such excess amount as shall have been de-
36 termined at the end of each month. If, however, according to said schedule of prices the sum of five thousand dollars ($5,000.00) shall appear as an amount in excess of the price of one million (1,000,000) feet of logs to be paid to Corporation, then and in that event such excess amount so appearing shall be credited to the Contractor upon his next monthly payment of five thousand dollars ($5,000.00) as herein provided.

4. In consideration of the price at which hemlock logs are to be delivered to Contractor hereunder, it is agreed that no credit or allowance shall be made Contractor on account of the falling or bucking of any of the standing timber in this supplemental memorandum contracted to be sold.

5. The operation of this contract is limited to such standing timber as is now spotted and marked with a cross, and Contractor shall fell only such timber as is now spotted and within the limits of the present cut over area, in addition to all such fallen and down logs, as are now located on the said southwest quarter (S. W. ¼) of Section thirty-five (35).

6. Contractor agrees to remove the said prairie logs in a systematic and orderly manner, so that each acre worked over shall be completely cleaned of all merchantable logs and timber, and in such manner that after logging operations have ceased the ground will be clean and in good condition and sufficiently free from all fire hazard arising by reason of the accumulation of debris or combustible material, to comply with the requirements of Corporation and of the regularly constituted fire authorities.

6½. Merchantable logs as hereinreferred to shall be defined in accordance with paragraph 4 of Contract SPC-358, but said paragraph 4 of Contract SPC-358 is amended so that all right of
37 way as well as prairie logs shall be scaled by a representative of Corporation at the time they are loaded on cars by Contractor. Such scale shall be conclusive and binding upon the parties, but Contractor shall have the privilege of being present at and checking such scale, and in the event of a dispute as to scale or merchantability, the matter shall be referred to Puget Sound Log Scaling and Grading Bureau, the cost of such reference to be shared equally between the parties.

7. Contractor further agrees and as a part of the consideration for the execution of this supplemental memorandum to clean up three

(3) miles of right of way of Spruce Production Railroad No. 1 and place the same in proper condition and to the satisfaction of Corporation and of the representatives of the Forestry Service, Department of Agriculture, of the United States, or of the Fire Warden of the State of Washington, as their jurisdiction may appear. The location of such three (3) miles of right of way to be so cleared and cleaned of all debris and combustible material shall be determined by Corporation during the next burning season, and Contractor shall begin and diligently prosecute such work upon the written demand of Corporation, but such three (3) miles of right of way shall be situated upon that portion of Spruce Production Railroad No. 1 over which Contractor is operating or has operated over under Contract SPC-358. Nothing in this supplemental agreement contained, however, shall be deemed to relieve Contractor from the liability of cleaning up and removing fire hazard upon the right of way of Spruce Production Railroad No. 1 as he shall proceed with his logging operations, so that he will leave the right of way in such condition that no greater fire hazard shall be created than now exists.

38 8. Under the terms and conditions of said Contract SPC-358, Contractor has assumed a certain liability for deferred maintenance on said Railroad No. 1. The cost of carrying on the work and placing the roadbed in proper condition is hereby stipulated between the parties hereto to be the sum of Fifteen hundred dollars ($1,500.00) as covering all deferred maintenance to date, and Corporation agrees that it will relieve Contractor of his liability on account of such deferred maintenance charge on that part of Railroad No. 1 heretofore operated over by Contractor, upon the payment to it of fifteen hundred dollars ($1,500.00), in addition to the work required to be done by Contractor in cleaning the right of way of Spruce Production Railroad No. 1 for a distance of three (3) miles as immediately hereinbefore set out. Such sum of fifteen hundred dollars ($1,500.00) shall be paid by Contractor to Corporation immediately upon the execution of this supplemental agreement.

9. In order to assist Contractor in carrying out the terms of this supplemental agreement, Corporation agrees to extend the operation of paragraph 6 of Contract SPC-358 in the manner following: Corporation agrees to move promptly with its own motive power, when such motive power shall be available, all empty cars and cars loaded with material, supplies and equipment for Contractor for the purposes of this contract from the junction of Spruce Production Railroad No. 1 with the Chicago, Milwaukee and St. Paul Railroad at Joyce, Washington, to the nearest siding east of Contractor's front of operations, and to return loaded cars from such siding or from the east front of Contractor's operations to said junction at Joyce, Washington. In no event shall Contractor's locomotives be allowed to pass the east switch of the siding first east of Contractor's seat of operations, except upon the express written order of the Corpo-
39 ration's Superintendent upon the ground. In this connection, Corporation agrees that when it undertakes to deliver

empty cars for Contractor at the nearest siding east of his front of operations, the same shall be delivered at such siding within sufficient time to allow Contract eight (8) regular working hours of time free from demurrage charge in which to load said empty cars and return them to said siding for movement to Joyce, Washington, and Corporation shall become liable for any demurrage charge accruing against Contractor because of its failure to allow Contractor such time. Contractor agrees to pay Corporation at the rate of twenty (20) cents per car mile for each car so moved. In the event that Contractor shall desire to move empty cars, cars of equipment and supplies and cars loaded with logs from Joyce, Washington to the seat of his operations and return with his own motive power, arrangements for such operations by Contractor shall be made only upon the special written permission of Corporation's superintendent on the ground, and in case of said operations under Contractor's own motive power, Contractor agrees to pay Corporation at the rate of (7½) cents per car mile for each car so moved over Spruce Production Railroad No. 1. For the purpose of computing payments hereunder, each locomotive shall be considered as equivalent to three (3) cars, and each steam shovel shall be considered as equivalent to two (2) cars. All sums earned as tariffs by Corporation as above provided, either as charges for moving Contractor's equipment and cars or for track charges for Contractor's operations, shall be due and payable to Corporation upon the tenth day of each month for the month immediately preceding. It is understood that there is no agreement between Corporation and any connecting Carrier, and that Corporation is acting hereunder solely for the accommodation of Contractor, and in no event shall Corporation be liable for any demurrage, switching or other charge made by any connecting carrier, except as hereinabove provided, and Contractor agrees to save Corporation harmless from any and all such demurrage, switching or other charges, whether cars are moved by Corporation or by Contractor. In the event that Corporation should discontinue its operations over its Railroad No. 1, and should dispose of its motive power before the expiration of this supplemental agreement and of the extension of Contract SPC-358, then the hauling and maintenance provisions originally contained in Contract No. SPC-358 shall prevail. Notice of such discontinuance of operations by Corporation shall be given to Contractor ten (10) days in advance.

10. Contractor agrees to and shall maintain the right of way and roadbed of Spruce Production Railroad No. 1 from the east front of its operation to the west end of said railroad near Lake Pleasant, Washington, as more particularly provided for in said Contract SPC-258, and Corporation agrees to maintain the remainder of said right of way and road bed of Spruce Production Railroad No. 1.

11. In the event that it shall become necessary for Corporation to operate trains over that part of Spruce Production Railroad No. 1, which is west of Contractor's east front of operations, such trains will be moved at the mutual convenience of both parties. Whenever it

becomes necessary for Corporation to move cars of its own material from the east front of Contractor's operations to a point west therefrom, Contractor agrees that he will on demand in writing diligently undertake with his own motive power to do such switching and moving of cars and rolling stock as Corporation may require, and
41 Corporation agrees that it will pay Contractor for such operations at the rate of twenty (20) cents per car mile for each car so moved at Corporation's instance.

12. Contractor agrees, and this supplemental memorandum is entered into with the express understanding that no greater amount of prairie logs than one million (1,000,000) feet shall be removed by Contractor during any month unless one million (1,000,000) feet of right of way logs shall have been removed, but nothing herein contained shall relieve Contractor of the requirements to pay in advance to Corporation on the first day of each and every month the sum of five thousand dollars ($5,000.00) as consideration for one million (1,000,000) feet of prairie logs as hereinbefore provided, whether such logs shall have been removed or not. Contractor shall brand all prairie logs with a separate brand, in order that the same may be easily distinguished from the right of way logs. Contractor further agrees that in the event the footage of prairie logs moved by him during any period shall exceed the footage of right of way logs removed, then Corporation may at its discretion and upon written notice to Contractor require Contractor to suspend the logging of prairie logs until the footage of right of way logs removed shall be equivalent to the footage of prairie logs, and Contractor agrees and covenants with Corporation that upon receipt of such notice he will so suspend the removal of prairie logs until the footage of right of way logs equals that of the prairie logs.

13. Contractor shall, at the time of the execution of this supplemental agreement, and before the same shall become effective, furnish Corporation with an extension of the surety bond required to be furnished in paragraph 11 of Contract SPC-358, or with a
42 new surety bond with some surety or indemnity company duly authorized to execute such bond and satisfactory to Corporation in the penal sum of twenty thousand dollars ($20,000.00), conditioned upon the full and faithful performance by Contractor of all the matters, terms and conditions of this agreement, and of the extension of Contract SPC-358, in the manner and within the time limits in said SPC-358 and this supplemental memorandum set out.

14. This supplemental agreement shall become effective upon its execution and upon the furnishing of a bond as hereinbefore provided, and shall remain in full force and effect until the 1st day of January, 1921, the date to which Contract SPC-358 has been extended, unless both shall be sooner terminated as herein provided. In the event that Corporation shall sell and dispose of its Railroad No. 1 at any time during the life of this contract, Corporation reserves the right upon thirty (30) days' written notice to Contractor

to cancel this supplemental contract and the extension of Contract SPC-358, and upon such thirty days' written notice all liability of Corporation, either in law or equity, to carry out the terms of said supplemental agreement or extension of Contract SPC-358 shall be determined and cease. However, upon giving of such notice of cancellation the obligation of Contractor hereunder to purchase prairie logs shall be terminated, but Contractor shall continue operations under extension of Contract SPC-358 during the ensuing thirty (30) days after giving of notice of cancellation. Corporation reserves the privilege at its discretion to assign all its right, title and interest in this supplemental agreement and in the extension of Contract SPC-358 to such parties as may purchase its Spruce Production Railroad No. 1, and Contractor agrees and covenants that he will carry out all the terms and conditions herein imposed upon him with such assignee of Corporation in like manner and subject to all requirements herein contained, being as fully bound to such assignee
43 as to Corporation.

15. In the event that Contractor shall have failed to remove all prairie logs before the 1st day of January, 1921, but shall have removed all right of way logs before said date, and in the further event that Corporation shall still retain title and possession of its Spruce Production Railroad No. 1, then Contractor agrees to remove all prairie logs at the rate of two million (2,000,000) feet per month during the time Corporation shall still retain possession of its Spruce Production Railroad No. 1 until all merchantable logs shall have been exhausted. If, however, Contractor shall have failed or refused to remove all prairie logs from said southwest quarter (S. W. ¼) of Section thirty-five (35) and from the property of Corporation before twelve (12) months from the date of the execution of this contract, then the rights of Contractor in said prairie logs shall be forfeited and held for naught, and the title to such logs shall revert to Corporation.

16. In the event that Contractor shall at any time fail, refuse or neglect to carry out each and every covenant, term and condition herein contained, to be kept by Contractor, both as to this supplemental agreement and as to the extension of Contract SPC-358, then Corporation reserves the privilege to declare all the rights of Contractor under this supplemental agreement and under the extension of Contract SPC-358 forfeited forthwith upon written notice to Contractor, and all moneys paid by Contractor and all logs not removed shall revert to and remain the property of Corporation. All notices or demands upon Contractor shall be given in writing, addressed and mailed to Contractor at Seattle, Washington. Notices and demands so given shall be sufficient for all purposes under this agreement.

44 17. Neither this supplemental contract nor the extension of Contract SPC-358 herein provided, nor any interest in either of them, shall be transferred or assigned by the Contractor to any person, firm or corporation without the written consent of Corporation, and in case of such attempted transfer or sale without

its written consent, Corporation may refuse to carry out this contract either with Contractor or his assignee, but any rights of action for breach of this contract by the Contractor are reserved by Corporation.

18. The Contractor hereunder is acting independently and has no authority to hold himself out as the agent of this Corporation or to bind the Corporation, and agrees to assume and pay all hauling and maintenance and other costs, charges and expenses arising from the operation of this supplemental agreement, and of the extension of Contract SPC-358, and shall protect and save harmless this Corporation from any and all liability or damage for all claims or injury to property or person, whether employees of Contractor or otherwise.

19. Contractor agrees that there is no written agreement or verbal understanding of any kind or nature with Corporation or any of its representatives whereby this agreement or any part thereof is altered, modified or varied in any manner whatsoever from the conditions above set out, nor any of its conditions waived.

20. Time is hereby declared to be of the essence of this contract.

In witness whereof, the parties hereto have hereunto set
45 their hands and seals the day and year first above written.

[Seal of United States Spruce Production Corporation.]

UNITED STATES SPRUCE PRODUCTION CORPORATION,
By CHAS. VAN WAY,
President.
By MAX CHURCH,
Secretary.
C. J. ERICKSON. [SEAL.]

Witnesses:

STELLA C. UTT.
E. R. CARLSON.

Approved as to form Aug. 20, 1920.

MAX CHURCH,
General Counsel.

Approved —— —, 1920.

—— ——,
Comptroller-Treasurer.

46 EXHIBIT C.

We Will Bond You.

United States Fidelity and Guaranty Company,

No. —. Baltimore, Maryland. $20,000.00.

Know all men by these presents; That we, C. J. Erickson of Seattle, Washington, as Principal, and the United States Fidelity and Guaranty Company, a corporation organized and existing under and by virtue of the law of the State of Maryland, and authorized to do business of surety in the State of Washington, as surety, are held and firmly bound unto the United States Spruce Production Corporation, in the full and just sum of Twenty Thousand and No/100 ($20,000) Dollars, lawful money of the United States of America, for the payment of which sum well and truly to be made, the said Principal hereby binds himself, his heirs, administrators, and executors, and the said Surety hereby binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 16th day of August, 1920.

The condition of this obligation is such, That,

Whereas, the above bonded Principal, C. J. Erickson, has entered into a supplemental contract bearing the date of July 30th, 1920, with the United States Spruce Production Corporation, for the purchasing of certain cedar, spruce and hemlock logs, at prices listed in attached contract, together with the operation of a certain railroad, marked Exhibit A., and made a part hereof, and

Whereas, one of the conditions of said contract is that the said C. J. Erickson shall furnish a bond in the sum of Twenty Thousand and No/100 ($20,000.00) Dollars, guaranteeing the faithful performance of said contract.

Now, therefore, if the above bonded Principal, C. J. Erickson, in all matters and things, shall comply with the said contract according to the terms and conditions of same and shall make due and prompt settlement for such logs and operate said railroad as provided for in said contract, then this obligation shall be void, otherwise to remain in full force and effect.

(Signed) C. J. ERICKSON.
[Corporate Seal.] UNITED STATES FIDELITY AND GUARANTY COMPANY,
(Signed) By C. H. CAMPBELL,
Attorney-in-fact.

(Internal Revenue Stamps—80¢.)

47 EXHIBIT "D."

Account of C. J. Erickson.

Downs Bldg.,
Seattle, Washington.

"Right-of-way Logs."

DEBITS.				CREDITS.		
Date.	Invoice number.	Amount.	Total.	Date.	Amount.	Total.
8-31-19	L. S. 51....	2,787.05		10-19-20...	6,946.21	
9-30-19	L. S. 52....	3,866.59				
10-31-19	L. S. 72....	2,445.86				
11-30-19	L. S. 81....	3,355.13				
12-31-19	L. S. 88....	1,680.93				
1-31-20	L. S. 220....	3,881.34				
2-29-20	L. S. 232....	3,666.39				
3-31-20	L. S. 303....	2,677.72				
4-30-20	L. S. 337....	2,259.86				
5-31-20	L. S. 341....	1,530.90				
6-30-20	L. S. 348....	4,412.17				
7-31-20	L. S. 353....	577.44				
8-31-20	L. S. 355....	6,946.21				
9-30-20	L. S. 356....	5,358.63				
10-31-20	L. S. 358....	5,284.84				
		50,731.06	50,731.06		6,946.21	6,946.21

"Prairie Logs."

8-31-20	L. S. 354....	2,849.56		9- 7-20...	5,000.00	
9-30-20	L. S. 357....	10,730.50		9-22-20...	2,849.56	
10-31-20	L. S. 359....	10,769.56		10-26-20...	5,000.00	
11-30-20	L. S. 361....	9,997.29		11-15-20...	5,000.00	
12-31-20	L. S. 363....	7,298.87				
1-31-21	L. S. 365....	875.04				
1-31-21	L. S. 364....	1,271.52				
		43,792.34	43,792.34		17,849.56	17,849.56

"Train Service."

9-17-20	L. 37.....	1,782.37	
10-19-20	L. 39.....	3,355.20	
11-17-20	L. 40.....	3,213.80	
1-18-21	L. 44.....	1,898.00	
1-18-21	L. 45.....	1,438.00	
2-26-21	L. 46.....	237.20	
4-13-21	L. 50.....	87.60	
		12,012.17	12,012.17

"Hauling Logs."

Debits.				Credits.		
Date.	Invoice number.	Amount.	Total.	Date.	Amount.	Total.
Oct. 1919	L. S. 52....	526.91				
Oct. 1919	L. S. 51....	558.67				
Dec. 1919	L. S. 72....	433.58				
Dec. 1919	L. S. 81....	383.20				
Jan. 1920	L. S. 88....	86.53				
Feb. 1920	L. S. 220....	315.03				
48						
Mar. 1920	L. S. 232....	455.02				
Apr. 1920	L. S. 303....	535.68				
May 1920	L. S. 337....	488.72				
June 1920	L. S. 341....	421.80				
July 1920	L. S. 348....	41.31				
		4,246.45	4,246.45			

"Clearing Right-of-way."

4-18-21	L. 52.....	5,968.65	5,968.65			
			116,750.67			24,795.77

49 *Account of C. J. Erickson.*

Downs Bldg.,
Seattle, Washington.

Car Rental.

Debits.				Credits.		
Date.	Invoice number.		Amount.	Date.		Amount.
9-11-19	L.	11.....	531.00	10- 7-19	Check.....	2,000.00
10- 9-19	L.	15.....	159.00	11- 4-19	"	3,000.00
10- 9-19	L.	14.....	294.00	1-28-20	"	2,246.82
11-20-19	L.	17.....	279.00	2-10-20	"	2,739.22
11-24-19	L.	18.....	93.00	3- 3-20	"	2,879.44
12-19-19	L.	19.....	360.00	3- 4-20	"	5,505.70
1-16-20	L.	25.....	372.00	3- 4-20	Cr. Memo.....	4.00
3-12-20	L.	28.....	357.00	4-26-20	Check.....	4,192.37
3-12-20	L.	29.....	460.00	4-16-20	"	1,550.00
4-12-20	L.	30.....	403.00	5-24-20	"	4,121.41
5- 3-20	L.	31.....	390.00	8- 9-20	"	1,477.00
7- 5-20	L.	32.....	334.00	8-23-20	"	5,961.98
8-18-20	L.	33.....	341.00	9- 7-20	"	1,500.00
9- 8-20	L.	36.....	310.00	9-27-20	"	10,000.00
10-11-20	L.	38.....	300.00	10-26-20	"	2,500.00
11-22-20	L.	41.....	310.00	6-14-21	Cr. Memo.....	1,280.65
1-12-21	L.	42.....	270.00	6-30-21	" "	268.00
1-12-21	L.	43.....	248.00	8-16-21	Check held as deposit.	4,000.00
2-28-21	L.	47.....	244.00			
2-28-21	L.	48.....	252.00			
4-13-21	L.	49.....	279.00			
5- 1-21	L.	54.....	180.00			

Train Service.

9-11-19	L. 11.....	21.00	

Merchandise.

Debits.			Credits.		
Date.	Invoice number.	Amount.	Date.		Amount.
10-30-19	L. 16.....	7.15			
10-10-19	B. 1006.....	238.53			
11-26-19	B. 1188.....	305.67			
1- 8-20	B. 1309.....	81.02			
1- 9-20	B. 1329.....	14.37			

Labor.

12-19-19	L. 20.....	502.67
8-18-20	L. 34.....	111.96
4-13-21	L. 51.....	75.90
11-22-20	B. 1846.....	126.17

Scaler's Salary.

12-30-19.....	130.00
1-31-20.....	130.00
2-29-20.....	58.33
3-31-20.....	43.33
4-30-20.....	87.50
5-30-20.....	87.50
6-30-20.....	87.50
7-31-20.....	87.50
8-31-20.....	87.50

50

9-30-20.....	87.50
10-31-20.....	87.50
11-30-20.....	87.50
12-31-20.....	87.50
1-31-21.....	87.50
2-28-21.....	87.50
3-31-21.....	87.50
4-30-21.....	87.50
5-31-21.....	87.50

Deferred Maintenance.

9- 7-20	L. 35.....	1,500.00

Ties.

2- 6-20	B. 1422.....	108.68	12-29-19	Check.....	1,000.00
3- 4-20	B. 1516.....	648.23	4-17-20	"	1,988.38
3-10-20	B. 1521.....	822.83	8- 9-20	"	1,721.48
3-10-20	B. 1522.....	769.05			
4-20-20	B. 1617.....	45.45			
4-13-20	B. 1623.....	1,554.53			
7-20-20	B. 1700.....	121.50			
10-14-20	B. 1831.....	200.25			
12-30-20	B. 1856.....	1,982.03			

Fire Hazard—Log Brand "T."

Debits.			Credits.	
Date.	Invoice number.	Amount.	Date.	Amount.
12-10-20	L. S. 360.....	1,322.27		
1-12-21	L. S. 362.....	2,107.66		
2-28-21	L. S. 366.....	1,254.25		
4-13-21	L. S. 367.....	2,387.73		
	Total.....	24,661.65	Total.....	59,937.20
			Credit Balance.....	35,275.55

Recapitulation.

	Debit.	Credit.
Totals of Sheets Nos. 1 and 2.....	$116,750.67	$24,795.77
" " " Nos. 3 and 4.....	24,661.65	59,937.20
	$141,412.32	$84,732.97
Balance due.....	$56,679.35	

51 Indorsed: Filed in the United States District Court, Western District of Washington, Northern Division, Oct. 11, 1921. F. M. Harshberger, Clerk, by S. E. Leitch, Deputy.

52 In the United States District Court for the Western District of Washington, Northern Division.

No. 6331.

UNITED STATES OF AMERICA and UNITED STATES SPRUCE PRODUCTION CORPORATION, a Corporation, Plaintiffs,

vs.

C. J. ERICKSON and UNITED STATES FIDELITY AND GUARANTY COMPANY, a Corporation, Defendants.

Motion of Defendants to Strike from Complaint.

Come now the defendants and move the court:

I.

That all of paragraph I of the complaint herein be stricken upon the ground that the same is irrelevant and immaterial.

II.

That all of paragraph II beginning with the words "by the Director of Aircraft Production" in the third and fourth lines of said paragraph, and continuing down to and including the words "the

purposes hereinafter more fully set forth," on line three of page two of said complaint, be stricken upon the ground that the same is irrelevant and immaterial.

III.

That all of paragraph III of said complaint be stricken upon the ground that same is irrelevant and immaterial.

IV.

That all of paragraph IV of said complaint be stricken upon the ground that same is irrelevant and immaterial.

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V.

That all of paragraph V of said complaint be stricken upon the ground that same is irrelevant and immaterial.

VI.

That all of paragraph VI of said complaint be stricken upon the ground that the same is irrelevant and immaterial.

VII.

That all of paragraph VII of said complaint be stricken upon the ground that the same is irrelevant and immaterial.

VIII.

That all of paragraph VIII of said complaint be stricken upon the ground that the same is irrelevant and immaterial.

SHANK, FELT & FAIRBROOK,
Attorneys for Defendants.

Service of the within paper is hereby admitted this 2 day of Nov. 1921.

THOS. P. REVELLE,
Attorney for Plaintiff U. S.

Indorsed: Filed in the United States District Court, Western District of Washington, Northern Division, Nov. 3, 1921. F. M. Harshberger, Clerk, by S. E. Leitch, Deputy.

54 United States District Court, Western District of Washington, Northern Division.

No. 6331.

UNITED STATES OF AMERICA and UNITED STATES SPRUCE PRODUCTION CORPORATION, a Corporation, Plaintiffs,

vs.

C. J. ERICKSON and UNITED STATES FIDELITY AND GUARANTY COMPANY, a Corporation, Defendants.

Order Denying Defendants' Motion to Strike from Complaint.

Be it remembered, that this matter duly and regularly came on for hearing before the above entitled court on November 21st, 1921, the plaintiff being represented by Messrs. Carey & Kerr and the United States Attorney, and the defendant being represented by Messrs. Shank, Felt & Fairbrook, and the court having heard arguments of counsel and being advised in the premises, all and singular, now therefore,

It is hereby ordered and adjudged that the motion of the defendants to strike from the complaint be and the same hereby is denied, to all of which the defendants except and exception is allowed.

Done in open court this 30th day of November, 1921.

EDWARD E. CUSHMAN,
Judge.

O. K. as to form.

SHANK, BELT & FAIRBROOK,
Attys. for Defts.

Indorsed: Filed in the United States District Court, Western District of Washington, Northern Division, Nov. 30, 1921. F. M. Harshberger, Clerk, by S. E. Leitch, Deputy.

55 In the United States District Court for the Western District of Washington, Northern Division.

No. 6331.

UNITED STATES OF AMERICA and UNITED STATES SPRUCE PRODUCTION CORPORATION, a Corporation, Plaintiffs,

v.

C. J. ERICKSON and UNITED STATES FIDELITY & GUARANTY COMPANY, a Corporation, Defendants.

Demurrer.

Come now the defendants and demur to the complaint herein upon the ground that it appears upon the face thereof that the court has no jurisdiction of the subject matter of the action.

SHANK, BELT & FAIRBROOK,
Attorneys for Defendants.

Service of the within paper is hereby admitted this 7 day of Dec. 1921.

THOS. P. REVELLE,
Attorney for U. S.

Indorsed: Filed in the United States District Court, Western District of Washington, Northern Division, Dec. 7, 1921. F. M. Harshberger, Clerk, by S. E. Leitch, Deputy.

56 United States District Court, Western District of Washington, Northern Division.

No. 6331.

UNITED STATES OF AMERICA and UNITED STATES SPRUCE PRODUCTION CORPORATION, a Corporation, Plaintiffs,

vs.

C. J. ERICKSON and UNITED STATES FIDELITY & GUARANTY COMPANY, a Corporation, Defendants.

Order Overruling Demurrer.

Be it remembered that this matter came on duly and regularly for argument this 19th day of December, 1921, plaintiffs being represented by Thomas P. Revelle, United States Attorney for the Western District of Washington, and John A. Frater, Assistant United States Attorney for said district, the defendants by Messrs. Shank, Belt & Fairbrook, and the Court being fully advised in the premises, now, therefore,

It is hereby ordered and adjudged that the demurrer of the defendants be, and the same hereby is, overruled.

Done in open court this 19th day of December, 1921.

EDWARD E. CUSHMAN,
Judge.

Indorsed: Filed in the United States District Court, Western District of Washington, Northern Division, Dec. 19, 1921. F. M. Harshberger, Clerk, By S. E. Leitch, Deputy.

57 In the District Court of the United States for the Western District of Washington, Northern Division.

No. 6331.

UNITED STATES OF AMERICA and UNITED STATES SPRUCE PRODUCTION CORPORATION, a Corporation, Plaintiffs,

v.

C. J. ERICKSON and UNITED STATES FIDELITY and GUARANTY COMPANY, a Corporation, Defendants.

Answer.

Come now the defendants herein and for answer to the complaint—

I.

Admit that the plaintiff United States Spruce Production Corporation is a corporation organized and existing under the laws of the State of Washington as a corporation of that state, and that the defendant C. J. Erickson is a citizen of the State of Washington and a resident of the Western District of Washington, Northern Division, and that the defendant United States Fidelity and Guaranty Company is a corporation organized and existing under the laws of the State of Maryland and a resident of that state, and that the amount in dispute herein exceeds the sum of $3,000.00 exclusive of interest and costs, and deny each and every other allegation contained in paragraph I of the said complaint, and deny particularly that this is a suit arising under the constitution or any law of the United
58 States or that the plaintiff United States Spruce Production Corporation is organized under or pursuant to any Act of Congress, and denies particularly that the United States of America has any legal interest in the cause of action herein set forth, or is a necessary or proper party hereto.

II.

Admit that the plaintiff United States Spruce Production Corporation was and now is a corporation created under the laws of the state of Washington, and is duly licensed and authorized to transact

business in the state of Washington, and has in all respects complied with the laws of the state of Washington entitling it to transact business therein, and deny that they have any knowledge or information sufficient to form a belief as to each and all of the allegations contained in paragraph II of said complaint, and therefore deny the same.

III.

Deny that they have any knowledge or information sufficient to form a belief as to each and all of the allegations contained in paragraph V of said complaint, and therefore deny each and every allegation therein contained.

IV.

Deny that they have any knowledge or information sufficient to form a belief as to each and all of the allegations contained in paragraph VI of said complaint, and therefore deny each every allegation therein contained.

V.

Admit that the railroad mentioned and described in paragraph VII of said complaint was approximately 36 miles in length, beginning at a point of connection with the Seattle Port Angeles
59 and Western Branch of the Chicago, Milwaukee & St. Paul Railway at Disque Junction in the county of Clallam, state of Washington, and extending thence in a general westerly direction to a point at or near Lake Pleasant in said county, and that for several miles of the route of the said railway line it was built upon the public lands of the United States in the Olympic Forest Reserve, under the jurisdiction of the Department of Agriculture, Forestry Service, with the approval of the Secretary of Agriculture, and deny that they have any knowledge or information sufficient to form a belief as to each and all of the other allegations contained in paragraph VII of said complaint, and therefore deny each and every of said allegations.

VI.

Admit that the provisions of an Act of Congress, approved July 9, 1918, are as alleged in paragraph VIII of said complaint, and deny that they have any knowledge or information sufficient to form a belief as to each and every of the other allegations contained in said paragraph of said complaint and therefore deny the same.

VII.

Deny that they have any knowledge or information sufficient to form a belief as to each and all of the allegation- contained in paragraph IX of said complaint, and therefore deny each and every of said allegations.

VIII.

Admit the execution of a contract with the defendant C. J. Erickson, a copy of which is attached to the complaint, marked Exhibit A, and admit that at the time of the execution of said contract the plaintiff United States Spruce Production was in possession of the said Spruce Production Railroad No. 1, and that
60 upon the right of way thereof were certain down or fallen fir, spruce, cedar and hemlock logs, cut from timber originally growing upon the right of way of the said railroad and then lying along and adjacent to the said right of way, and deny that they have any knowledge or information sufficient to form a belief as to each and all of the other allegations contained in paragraph X of said complaint, and therefore deny each and every of said allegations.

IX.

Admit all the allegations contained in paragraphs XI and XII of the said complaint wherein the legal effect of the provisions of the said contract are correctly set forth, but deny particularly that the contract was in any way different from the contract, a copy of which is attached to the complaint and marked Exhibit A, and whatever allegations of paragraphs XI and XII allege a legal effect different from that as set forth in the copy of said contract, such allegations are hereby denied by these defendants.

X.

Admit that the defendant Erickson furnished the surety bond as provided for in said contract, and that the defendant Erickson entered upon the performance of the contract, and thereafter cut and removed the part of the logs agreed by him to be purchased thereunder, but deny each and every other allegations contained in paragraph XIII of said complaint, and deny particularly that the plaintiff corporation turned over the railroad to the defendant Erickson prior to April 1920, and deny particularly that the defendant Erickson failed to comply with the terms of his contract, and deny particularly that the plaintiff corporation complied with the terms of the contract on its part.

61 XI.

Deny that the defendant Erickson has failed to make payment for freight as alleged in paragraph XIV of said contract.

XII.

Admit the execution and delivery of the contract attached to the complaint and marked Exhibit B, as alleged in paragraph XV of said complaint.

XIII.

Admit all the allegations contained in paragraphs XVI, XVII, XVIII, XIX, XX, XXI, XXII and XXIII of the said complaint wherein the legal effect of the provisions of the said supplemental contract are correctly set forth, but deny particularly that the said contract was in any way different from the contract, a copy of which is attached to the complaint and marked Exhibit B, and whatever allegations of paragraphs XVI, XVII, XVIII, XIX, XX, XXI, XXII and XXIII allege a legal effect different from that as set forth in the copy of said contract, such allegations are hereby denied by these defendants.

XIV.

Deny that the said logs were scaled or measured or classified in accordance with the said contracts as alleged in paragraph XXIV of said complaint, and deny that the defendant Erickson failed, neglected or refused to pay for all logs which he received, and deny that the true purchase price of the right of way logs purchased by the said defendant Erickson and moved by him pursuant to the said contract was or should be greater than the sum of $25,365.53, and deny that the total amount of prairie logs purchased by the said defendant Erickson and received and moved by him pursuant to the said contract and that the prices named therein were or ought
62 to be any sum greater than $20,822.89, and deny that under and pursuant to the said contracts the plaintiff corporation performed train service for the defendant Erickson at the rates in the said contract provided aggregating a sum greater than $6,006.09, and deny that the location of the three miles of right of way to be cleared and cleaned of debris and combustible matter as required by the terms of said supplemental contract S. P. C.—470 was ever determined or designated by the corporation as in the said supplemental contract required, or at all, and deny that any written demand was ever made upon the said defendant Erickson by the plaintiff corporation as therein provided, or at all, and deny that the plaintiff corporation has suffered any special damage by reason of any failure to clear and clean of debris and combustible matter the said right of way as alleged in paragraph XXVI of said complaint in the sum of $5,968.65, or in any sum whatever.

XV.

Admit that the defendant Erickson paid the sum of $6,946.21 upon the right of way logs purchased and $17,849.56 upon the prairie logs purchased, and admit that there were other dealings between the plaintiff corporation and the said defendant Erickson, both debit and credit, and that the defendant Erickson is entitled to all the credits set forth in Exhibit D attached to the complaint herein, and deny that the plaintiff corporation is entitled to charge

against the defendant Erickson, under the item Fire Hazard—Log Brand "T" an amount greater than the sum of $2,828.76, and deny that the plaintiff corporation is entitled to make any charge against the said defendant Erickson for any of the items set forth in Exhibit D as car rental.

63 And for a further and affirmative defense and counterclaim, these defendants allege as follows:

I.

That the said plaintiff corporation and the defendant Erickson, subsequent to the execution of the said contracts, entered into an oral agreement whereby the items of rental for cars amounting to $6,766.00 was to be applied upon the purchase price of the said cars, but that the said plaintiff corporation subsequently refused to allow the said application of rentals paid, and these defendants are on account thereof entitled to a credit in the sum of $6,766.00.

II.

That the said plaintiff corporation failed to load the Fire Hazard Logs upon cars to the specified minimum capacity of the cars, and on account thereof the defendant Erickson suffered a direct loss from excess freight paid in the aggregate sum of $345.37.

III.

That the plaintiff corporation lost logs in Lake Crescent that had been purchased and charged against the defendant Erickson under the said contract to an amount of 14,000 feet and of a value of $191.80, and the said defendant Erickson is entitled to a credit in that amount.

IV.

That certain logs amounting in the aggregate to 125,000 feet were dropped from the trains along the railroad right of way by the plaintiff corporation and were subsequently picked up and included among the Fire Hazard Logs at a price of $13.70 per M, and
64 the said defendant Erickson is entitled to a credit on account thereof in the sum of $1,712.50.

V.

That the plaintiff corporation did not turn over that portion of the track up to Mile 23 until November 1, 1919, and did not turn over that portion of the track up to Lake Pleasant until the spring of 1920, and on account of such failure, the said defendant Erickson was damaged in the sum of $5,000.00, and these defendants are entitled to a credit in the sum of $5,000.00 on account of such damage.

Wherefore these defendants pray that they be dismissed hence with costs.

SHANK, BELT & FAIRBROOK,
Attorneys for Defendants.

UNITED STATES OF AMERICA,
State of Washington,
County of King, ss:

C. J. Erickson, being first duly sworn on oath deposes and says: I am plaintiff in the above entitled action and make this verification for myself and on behalf of my co-plaintiff above named, being thereunto duly authorized; I have read the foregoing answer, know the contents thereof and believe the same to be true.

C. J. ERICKSON.

Subscribed and sworn to before me this 13th day of January, 1922.

[Notarial Seal.]

FRANCES BURR,
Notary Public in and for the State of Washington, residing at Seattle.

65 Service of the within paper is hereby admitted this 13 day of Jan. 1922.

THOS. P. REVELLE,
Attorney for United States.

Indorsed: Filed in the United States District Court, Western District of Washington, Northern Division, Jan. 13, 1922. F. M. Harshberger, Clerk, by S. E. Leitch, Deputy.

66 In the District Court of the United States for the Western District of Washington, Northern Division.

No. 6331.

UNITED STATES OF AMERICA and UNITED STATES SPRUCE PRODUCTION CORPORATION, a Corporation, Plaintiffs,

vs.

C. J. ERICKSON and UNITED STATES FIDELITY AND GUARANTY COMPANY, a Corporation, Defendants.

Reply.

Come now the plaintiffs and for reply to the further and affirmative defense and counterclaim filed by the defendants herein, deny and admit as follows:

I.

Plaintiffs deny each and every allegation of paragraph I of such further and affirmative defense and counterclaim.

II.

Plaintiffs deny each and every allegation of paragraph II of such further and affirmative defense and counter-claim.

III.

As to the allegations contained in paragraph III of such further and affirmative defense and counterclaim, plaintiffs state that they have no knowledge or information sufficient to form a belief, and therefore they deny each and every allegation contained in paragraph IV of such further and affirmative defense and counterclaim.

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IV.

As to the allegations of paragraph IV of such further and affirmative defense and counterclaim, these plaintiffs admit that some logs were dropped from the trains along the railroad right of way by the plaintiff corporation, but deny that the quantity amounted to 125,000 feet, and except as above admitted, plaintiffs deny each and every allegation contained in paragraph IV of such further and affirmative defense and counterclaim.

V.

Plaintiffs deny each and every allegation of paragraph V of such further and affirmative defense and counterclaim.

Wherefore, plaintiffs pray for judgment as in their complaint demanded.

THOMAS P. REVELLE,
CAREY AND KERR,
Attorneys for Plaintiffs.

STATE OF OREGON,
County of Multnomah, ss:

I, Max Church, being first duly sworn depose and say that I am Secretary of the United States Spruce Production Corporation, plaintiff within named; that I have read the foregoing reply and the same is true as I verily believe.

MAX CHURCH.

Subscribed and sworn to before me, this 17th day of January, 1922.
[SEAL.] G. C. FRISBIE,
Notary Public for Oregon.

My commission expires Aug. 4, 1924.

68 STATE OF WASHINGTON,
County of King, ss:

Due service of the within reply is hereby accepted in King County, Washington, this 18th day of January, 1922, by receiving a copy thereof, duly certified to as such by Chas. H. Carey, of attorneys for plaintiffs.

SHANK, BELT & FAIRBROOK,
Attorney- for Defendant.

Indorsed: Filed in the United States District Court, Western District of Washington, Northern Division, Jan. 18, 1922. F. M. Harshberger, Clerk, by S. E. Leitch, Deputy.

69 In the District Court of the United States for the Western District of Washington, Northern Division.

No. 6331.

UNITED STATES OF AMERICA and UNITED STATES SPRUCE PRODUCTION CORPORATION, a Corporation, Plaintiff-,

vs.

C. J. ERICKSON and UNITED STATES FIDELITY AND GUARANTY COMPANY, a Corporation, Defendants.

Verdict.

We, the jury in the above entitled cause, find for the plaintiffs the United States of America and the United States Spruce Production Corporation and against the defendants C. J. Erickson and the United States Fidelity and Guaranty Company and fix the recovery of the plaintiffs against the defendant C. J. Erickson at the sum of Forty five thousand seven hundred ten and 70/100 dollars ($45,710.70) and against defendant United States Fidelity and Guaranty Company at the sum of Twenty Thousand Dollars ($20,000).

O. R. [illegible]BEL,
Foreman.

Indorsed: Filed in the United States District Court, Western District of Washington, Northern Division, May 12, 1922. F. M. Harshberger, Clerk, by S. E. Leitch, Deputy.

70 In the District Court of the United States for the Western District of Washington, Northern Division.

No. 6331.

UNITED STATES OF AMERICA and UNITED STATES SPRUCE PRODUCTION CORPORATION, a Corporation, Plaintiffs,

vs.

C. J. ERICKSON and UNITED STATES FIDELITY AND GUARANTY COMPANY, a Corporation, Defendants.

Judgment Order.

This cause heretofore came on for trial, the United States of America appearing by John A. Frater, Assistant United States Attorney, and the United States Spruce Production Corporation appearing by Omar C. Spencer, one of its attorneys, and the defendants appearing by Corwin S. Shank, H. C. Belt and Wm. E. McClure, and a jury of twelve men having been regularly impaneled and sworn to try the cause, and the jury having heard the evidence offered by the parties, the argument of counsel and instructions of the court and having returned into court a verdict on May 12, 1922, in favor of plaintiffs and against C. J. Erickson in the sum of $45,710.70 and against the defendant United States Fidelity and Guaranty Company in the sum of $20,000.00, and the said verdict having been filed herein,

Now, therefore, upon application made by the counsel representing the plaintiffs for a judgment based upon the verdict, it appearing from the records and files herein that the defendant United States Fidelity and Guaranty Company is sued herein as surety for the defendant C. J. Erickson, the court being fully advised, it is by the court

71 Ordered, considered and adjudged that the plaintiffs have and recover judgment of and from the defendant C. J. Erickson in the sum of $45,710.70, and against the defendant United States Fidelity and Guaranty Company in the sum of $20,000.00, and against each of said defendants for the plaintiff's costs and disbursements incurred in this action amounting to the sum of $274.43; that said judgments against the defendants C. J. Erickson and the United States Fidelity and Guaranty Company are not cumulative and the court hereby orders and directs that in case execution issue hereon said execution shall be levied, first upon the property of the defendant C. J. Erickson, and that the property of the said C. J. Erickson shall be first exhausted before any levy be made upon the property of the defendant United States Fidelity and Guaranty Company.

It is further ordered, considered and adjudged that in case the defendant the United States Fidelity and Guaranty Company shall be compelled to pay the said judgment against it, or any part thereof,

the said defendant United States Fidelity & Guaranty Company, after the satisfaction in full of the judgment against the defendant C. J. Erickson, shall be subrogated to all the rights of the plaintiffs herein against the defendant C. J. Erickson and shall have execution for such portion of said judgment as it, the said defendant United States Fidelity and Guaranty Company, shall be required and compelled to pay because of said judgment.

Dated this 26th day of May, A. D. 1922.

EDWARD E. CUSHMAN,
District Judge.

O. K. — form.

McCLURE & McCLURE.
SHANK, BELT & FAIRBROOK.

72 Indorsed: Filed in the United States District Court, Western District of Washington, Northern Division, May 26, 1922. F. M. Harshberger, Clerk, by S. E. Leitch, Deputy.

73 In the District Court of the United States for the Western District of Washington, Northern Division.

No. 6331.

UNITED STATES OF AMERICA and UNITED STATES SPRUCE PRODUCTION COPORATION, a Corporation, Plaintiffs and Defendants in Error,

vs.

C. J. ERICKSON and UNITED STATES FIDELITY AND GUARANTY COMPANY, a Corporation, Defendants and Plaintiffs in Error.

Petition for Writ of Error.

And now come C. J. Erickson and United States Fidelity and Guaranty Company, a corporation, the defendants herein, and say that on or about the 26th day of May, 1922, the said district court entered a judgment herein in favor of the said defendants in error, plaintiffs in said cause, United States of America and United States Spruce Production Corporation, a corporation, and against these plaintiffs in error, defendants in said district court, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of these plaintiffs in error or defendants in said district court, all of which more in detail appear from the assignment of errors which is filed with this petition.

Wherefore, these plaintiffs in error pray that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of errors so complained of and that a transcript of

the record proceedings and papers in this cause duly authenti-
74 cated may be sent to the Supreme Court of the United States.

SHANK, BELT & FAIRBROOK,
Attorneys for Plaintiff in Error, C. J. Erickson.
McCLURE & McCLURE,
Attorneys for Plaintiff in Error, United States Fidelity and Guaranty Company.

Indorsed: Filed in the United States District Court, Western District of Washington, Northern Division, Aug. 14, 1922. F. M. Harshberger, Clerk, by S. E. Leitch, Deputy.

75 In the District Court of the United States for the Western District of Washington, Northern Division.

No. 6331.

UNITED STATES OF AMERICA and UNITED STATES SPRUCE PRODUCTION CORPORATION, a Corporation, Plaintiffs,

vs.

C. J. ERICKSON and UNITED STATES FIDELITY AND GUARANTY COMPANY, a Corporation, Defendants.

Assignment of Errors.

The defendants in this action in connection with their petition for a writ of error make the following assignment of errors, which they aver exist:

I.

The court erred in denying the motion of defendants to strike from the complaint.

II.

The court erred in overruling the demurrer of the defendants.

III.

The court erred in assuming jurisdiction of the said cause.

IV.

The court erred in entering judgment in favor of the plaintiffs and against the defendants for the reason that the said court was without any jurisdiction whatsoever to enter any such judgment.

Wherefore, the defendants pray that said judgment be reversed.

SHANK, BELT & FAIRBROOK,
Attorneys for Defendant C. J. Erickson.
McCLURE & McCLURE,
Attorneys for Defendant United States Fidelity & Guaranty Company.

76 Indorsed: Filed in the United States District Court, Western District of Washington, Northern Division, Aug. 14, 1922. F. M. Harshberger, Clerk, by S. E. Leitch, Deputy.

77 In the District Court of the United States for the Western District of Washington, Northern Division.

No. 6331.

UNITED STATES OF AMERICA and UNITED STATES SPRUCE PRODUCTION CORPORATION, a Corporation, Plaintiffs,

vs.

C. J. ERICKSON and UNITED STATES FIDELITY AND GUARANTY COMPANY, a Corporation, Defendants.

Order Allowing Writ of Error.

This 14th day of August, 1922, come the defendants by their attorneys and file herein and present to the court their petition praying for the allowance of a writ of error and an assignment of errors intended to be urged by them praying also that a transcript of the record, proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises.

On consideration whereof the court does allow the writ of error upon the defendants giving bond according to law in the sum of $500.00/100.

EDWARD E. CUSHMAN,
Judge.

Indorsed: Filed in the United States District Court, Western District of Washington, Northern Division, Aug 14, 1922. F. M. Harshberger, Clerk, by S. E. Leitch, Deputy.

78 #6331.

Know all men my these presents, that we, C. J. Erickson and United States Fidelity and Guaranty Company, a corporation, as principals and The Aetna Casualty and Surety Company as surety are held and firmly bound unto United States of America and United States Spruce Production Corporation, a corporation, in the full and just sum of $500.00/100 to be paid to the said United States of America and United States Spruce Production Corporation for which payment well and truly to be made we bind ourselves, our heirs, successors and personal representatives jointly and severally by these presents.

Sealed with our seals and dated this 9th day of August in the year of our Lord one thousand nine hundred and twenty two.

Whereas, lately at a District Court of the United States in and for the Western District of Washington, Northern Division, in a suit pending in said court between United States of America and the United States Spruce Production Corporation, a corporation, plaintiffs, and C. J. Erickson and United States Fidelity and Guaranty Company, a corporation, defendants, a judgment was rendered against the said C. J. Erickson and United States Fidelity and Guaranty Company, a corporation, and the said C. J. Erickson and United States Fidelity and Guaranty Company, a corporation, having obtained a writ of error and filed a copy thereof in the clerk's office of said court to reverse the judgment in the aforesaid suit, and a citation directed to the said United States of America and United States Spruce Production Corporation, a corporation, citing and admonishing them to be and appear at a session of the Supreme Court of the United States to be holden at the City of Washington, on the 13th day of October next.

Now the condition of the above obligation is such that if the said C. J. Erickson and United States Fidelity and Guaranty
79 Company, a corporation, shall prosecute said writ of error to effect, and answer all costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

C. J. ERICKSON.

[Corporate Seal.] UNITED STATES FIDELITY & GUARANTY COMPANY,

By JOHN C. McCOLLISTER,
Attorney in Fact.

[Corporate Seal.] THE ÆTNA CASUALTY AND SURETY COMPANY,

By A. R. CLOSE,
Its Resident Vice President.

Attest:

CHAS. M. DIAL,
Its Resident Assistant Secy.

Approved by

EDWARD E. CUSHMAN,
Judge of said District Court.

Indorsed: Filed in the United States District Court, Western District of Washington, Northern Division, Aug. 14, 1922. F. M. Harshberger, Clerk, by S. E. Leitch, Deputy.

80 In the District Court of the United States for the Western District of Washington, Northern Division.

No. 6331.

UNITED STATES OF AMERICA and UNITED STATES SPRUCE PRODUCTION CORPORATION, a Corporation, Plaintiffs,

vs.

C. J. ERICKSON and UNITED STATES FIDELITY AND GUARANTY COMPANY, a Corporation, Defendants.

Certificate.

In this cause I hereby certify that in the proceedings had in this court in the above entitled cause wherein United States of America and United States Spruce Production Corporation, a corporation, where plaintiffs, and C. J. Erickson and United States Fidelity and Guaranty Company, a corporation, were defendants, a question of the jurisdiction of this court arose in the following manner, to-wit:

The cause of action sued on herein was the breach of a contract entered into between the plaintiff, United States Spruce Production Corporation, and the said defendant C. J. Erickson. The jurisdiction of this court depended upon the facts as alleged in the bill of complaint and proven at the trial of the case as follows, to-wit:

The plaintiff, United States Spruce Production Corporation is a corporation organized under the laws of the state of Washington as a corporation of that state. The defendant C. J. Erickson is a citizen of the state of Washington and a resident of the Western District of Washington, Northern Division. The defendant United States Fidelity and Guaranty Company is a corporation organized under the laws of the state of Maryland and a citizen of that state.

81 The matter in dispute herein exceeds the sum of $3,000.00 in amount exclusive of interest and costs. The United States of America joined as plaintiff to protect its interests.

During the times herein mentioned the plaintiff, United States Spruce Production Corporation, was and now is a corporation created under the laws of the state of Washington by the Director of Aircraft Production under and pursuant to the act of Congress of July 9, 1918, amending the Act of April 11, 1918 (U. S. Compiled Statutes 1919, Compact Edition, Appendix page 1771), for the purposes hereinafter more fully set forth, and was duly licensed and authorized to transact business in the State of Washington and had in all respects complied with the laws of that state entitling it to transact business therein.

Under and pursuant to certain Acts of Congress, particularly the Act of June 3, 1916 (Chap. 134, 39 Statutes 166 at page 213, Sec. 120), the Act of Congress of March 4, 1917 (Chap. 180, 39 Statutes 1192), and the Act of Congress of July 24, 1917 (Chap. 40, 39 Stat.

page 243, Sec. 9), and other enactments, the President of the United States authorized the purchase and acquisition of spruce and fir lumber, among other commodities, as war material, and authorized the construction of aircraft for use in the navy and in the army of the United States within the amount of appropriations and in compliance with the terms of said Acts. Through the War Department and under the direction of the Chief Signal Officers of the United States Army plans were made for the production of such war material, including the building of the railroad hereinafter mentioned.

By the above mentioned Act approved July 24, 1917 authority was given to the President acting through the War Depart-
82 ment during the existing emergency occasioned by the state of war between the United States and the Central European powers for the purchase, manufacture, maintenance, repair and operation of airships and other aerial machines, including the acquisition and development of plans, factories, and establishments for the manufacture of airplanes, aircraft, machines and appurtenances, the purchase of raw and semi-finished materials therefor, and of all other things necessary for creating and extending the production of airplanes, aircraft, engines, and all other appurtenances, and the sum of $640,000,000.00 was appropriated for the purpose of carrying on the said operations and to put said Act into effect. Under the provisions of the Act of Congress approved March 4, 1917 (Sections 3115 1/16*a*, 3115 1/16*b*, 3115 1/16c and 3115 1/16*d*, U. S. Compiled Stat., Compact Ed.), the President was authorized and empowered, within the limit of funds appropriated therefor, to requisition for the use of the government during the war emergency war materials and plants for the production of war materials, which included arms, armament, ammunition, stores, supplies and equipment for ships and airplanes and everything required for or in connection with the production thereof, and was authorized to exercise the power and authority so vested in him and to expend the money appropriated by means of and through such agency or agencies as he might determine upon from time to time. By the Act of Congress approved April 11, 1918, as amended by the Act of Congress approved July 9, 1918, the Secretary of War was authorized to acquire by condemnation lands and interests in lands for military purposes, including standing or fallen timber, sawmills, camps, machinery, logging roads, rights of way, equipment, materials and supplies and any works, property or appliances suitable for the ef-
83 fectual production of such lumber and timber production. The said last mentioned act further provided that when the owners of such land, interest and rights appurtenant thereto should fix a price for the same which in the opinion of the Secretary of War would be reasonable he might purchase or enter into a contract for the use of the same at such price without further delay.

Accordingly, the government of the United States in the then existing war emergency, under the direction of the President and Secretary of War, being in need of spruce, fir and other lumber for the manufacture and production of such war material, especially aircraft, and in order to facilitate the production of such lumber

products, undertook the construction of certain logging railroads in the states of Washington and Oregon for the transportation of such lumber products as would be required in the manufacture of aircraft and for other purposes. These operations were originally begun by the Signal Corps, Aviation Section of the United States Army, and later by the Bureau of Aircraft Production, Spruce Production Division of the United States War Department, these being the agencies through which the powers vested in the President of the United States and the Secretary of War under the foregoing Acts of Congress were exercised. Among other logging railroads so constructed was the logging railroad hereinafter described, known as Spruce Production Railroad No. 1, in Clallam County, in the State of Washington.

For the purposes aforesaid and under said Acts of Congress, the United States, acting through the Signal Corps of the United States Army, entered into a contract with contractors for the construction of the railroad hereinafter described, and for the acquisition
84 of rights of way therefor. Nearly all of the right of way and lands acquired for that railroad were acquired through such contractors who also performed the work, or nearly all of the work, of constructing said logging railroad. Afterwards, however, and prior to the signing of the Armistice in the war already mentioned, all of these properties were transferred to the United States Spruce Production Corporation, and additional rights of way were acquired by that corporation, and additional work upon the said railway line was done by that corporation. The said railroad was constructed upon a route located and designated by the United States government and the said railway line, with its rights of way and appurtenances, as built and constructed, was built for and acquired by and became the property of the United States, although the title thereto was transferred to the plaintiff corporation and still is carried in the name of the United States Spruce Production Corporation for convenience.

At the time of the Armistice the work of getting out the war material above mentioned was mostly suspended by the government, but some operations necessarily continued for a period of months after that date. The United States Spruce Production Railroad No. 1 was then nearly completed and some work was thereafter done by the United States Spruce Production Corporation, plaintiff, under the direction of the War Department to put it in operating condition. This railroad was approximately thirty-six miles in length, beginning at a point of connection with Seattle, Port Angeles and Western Branch of the Chicago, Milwaukee and St. Paul Railway at Disque Junction in the County of Clallam, state of Washington, and extending thence in a general westerly direction to a point at or
85 near Lake Pleasant in said county. For several miles of the route of the said railway line it was built upon the public lands of the United States in the Olympic Forest Reserve, under the jurisdiction of the Department of Agriculture, Forestry Service, with the approval of the Secretary of Agriculture. Under the terms and conditions of the permit authorizing the construction thereof upon

such last mentioned lands it was necessary to comply with certain requirements as to clearing the right of way of the railroad of logs, brush and debris causing fire hazard for the necessary protection of the forests in the said reserve and the timber privately owned in the vicinity of the said railroad.

By the provisions of the Act of Congress approved July 9, 1918, the Director of Aircraft Production of the United States Government was authorized, whenever in his judgment it would facilitate the production of aircraft, aircraft equipment or material therefor, for the United States and the governments allied with it in the prosecution of the war, to form under the laws of the District of Columbia, or under the laws of any state, one or more corporations for the purchase, production, manufacture and sale of aircraft, aircraft equipment or material therefor, and to build and operate railroads in connection therewith; said Director being further authorized to acquire on behalf of the United States the capital stock and securities of any corporation so formed by him. The provisions of that Act further authorized the Secretary of War, acting through the Director of Aircraft Production, to transfer by appropriate instruments to any such corporation as might be formed thereunder any interest of the United States in any existing contracts for aircraft, aircraft equipment, or materials therefor, and the title
86 in land, railroads, or equipment used in or in connection with the production of aircraft, aircraft equipment or materials therefor, on such terms as the Secretary of War, acting through the Director of Aircraft Production, should deem fit. Pursuant to the authority of that Act of Congress the Director of Aircraft Production caused to be formed under the laws of the state of Washington the plaintiff corporation, known as United States Spruce Production Corporation.

The incorporators of the said corporation were officers of the United States Army and in so incorporating they acted for and in behalf of the United States of America. All of the shares of the corporation, except qualifying shares, were subscribed by the Director of Aircraft Production. All of the capital used by the corporation in its operations was furnished by the United States Government. The qualifying shares were taken in the name of the trustees of the corporation, who from time to time have held one share each to qualify them to serve in that capacity, but none of the said trustees has any interest in the corporation, and each of the trustees holds the share of stock standing in his name solely as representative of and for the use and benefit of the United States. Each of the trustees has in writing assigned to the Secretary of War, for the benefit of the United States, any and all moneys, profits or dividends that might accrue upon the stock held by him, and each has certified that the share of stock standing in his name was issued solely for the purpose of qualifying him as trustee of the corporation. No dividends are payable to or have been paid to the stockholders, and the trustees have received no compensation except for services rendered otherwise than as trustees. Some time after organization, on the

advice of the Director of Aircraft Production, the articles
87 of incorporation were so amended as to confine the powers thereof to those mentioned in the foregoing Act of Congress of July 9, 1918, Chapter 16, entitled, "An Act Making Appropriations for the Support of the Army," etc. and upon the advice of the Director of Aircraft Production, the by-laws of the corporation were so amended that the trustees were made removable by a majority of the outstanding shares, so that, as the government has all but the qualifying shares, the several trustees are removable by the government at will. At all times since the organization of the corporation the president thereof has been an officer of the United States Army, and during its activities nearly all of the officers and agents were officers of the United States Army, or enlisted men thereof. Two of the four trustees are at present officers of the United States Army, specially assigned to such duty. Nearly all of the men employed in the building of the railroad were of the United States Army, and all acts of the trustees, the officers and agents of the corporation, have at all times been performed under the direction of and in accordance with the instructions of the Secretary of War or the Chief of Air Service, or the Director of Aircraft Production. The work undertaken by the corporation, as herein described was planned by the Director of Aircraft Production, who reported the same to the Secretary of War, who gave his approval thereof, and after the organization of the corporation as herein described there was transferred to the corporation by the said officers all contracts between the United States and others for the production of such war material and for the construction of the railroad, and the property has ever since been held under their direction pursuant to the said Acts of Congress, and said corporation
is an agency, arm, or instrumentality of the United States,
88 and upon liquidation of its assets, pursuant to the terms of the said Acts of Congress, all of the proceeds thereof will be paid into the treasury of the United States and no one will receive any profit or dividend therefrom. The said corporation is not engaged in commercial business, nor has it ever engaged in any other business save as herein stated. No person, firm, or individual has any interest, right, title or estate in or to any shares of stock of that corporation, or in or to any property owned or held by that corporation, and all of its functions as a corporation are carried out in the manner described for war purposes of the United States.

After the Armistice the corporation remained in the possession of said Spruce Production Railroad No. 1, and upon the right of way thereof were certain down or fallen fir, spruce, cedar and hemlock logs, cut from timber originally growing upon the right of way of the said railroad and then lying along and adjacent to the said right of way, and the plaintiffs were desirous of selling and disposing of said logs to the defendant Erickson and were willing to allow the said defendant the privilege of operating the said railroad for the purpose of picking up and hauling the said logs to the defendant's sawmill, which the defendant owned, near Port Angeles,

Clallam County, Washington. Thereupon and on or about the 21st day of April, 1919, the plaintiff corporation, the United States Spruce Production Corporation, entered into a contract with C. J. Erickson for the sale of certain of said logs and the transportation thereof upon the said railroad, and thereafter entered into various other supplemental contracts and agreements, the alleged breach of which formed the basis of the above entitled action.

89 The defendant United States Fidelity and Guaranty Company was made a party defendant for the reason that it had given a bond in the sum of $20,000.00 to secure the faithful performance of the said contract by the said defendant C. J. Erickson.

Thereafter the defendants appeared and moved to strike from the bill of complaint all of the allegations above set forth which connected or tended to connect the United States of America with the cause of action upon the ground that the same were irrelevant and immaterial, which motion was by the court denied, to which action of the court the defendants duly excepted.

Thereafter the defendants appeared and demurred to the complaint upon the ground that the court was without jurisdiction, which demurrer was by the court overruled, to which action of the court the defendants duly excepted, and upon both the hearing upon the said motion to strike and upon the demurrer the defendants raised the question of the jurisdiction of this court as a federal court to hear and determine the said cause and asserted that the United States of America was neither a necessary nor proper party to the said action, and that therefore the said cause of action being solely a cause of action founded on contract between a corporation organized under the laws of the state of Washington on the one part and a citizen and resident of the state of Washington on the other part the said court was without jurisdiction to hear and determine the same, but this court in consideration of the allegations and facts aforesaid was of the opinion that it had jurisdiction to hear and determine the case.

This certificate is made conformably to Act of Congress of
90 March 3, 1891, Chapter 517.

Dated this 21st day of August, A. D. 1922.

EDWARD E. CUSHMAN,
Judge of the District Court of the United States for the Western District of Washington, Northern Division.

O. K.
CAREY & KERR,
OMAR C. SPENCER,
Of Attorneys for Plaintiff.

Indorsed: Filed in the United States District Court, Western District of Washington, Northern Division, Aug. 21, 1922. F. M. Harshberger, Clerk.

91 In the District Court of the United States for the Western District of Washington, Northern Division.

No. 6331.

UNITED STATES OF AMERICA and UNITED STATES SPRUCE PRODUCTION CORPORATION, a Corporation, Plaintiffs,

v.

C. J. ERICKSON and UNITED STATES FIDELITY AND GUARANTY COMPANY, a Corporation, Defendants.

Præcipe.

To F. M. Harshberger,
Clerk of said court:

Will you kindly include in your return to the writ of error herein copies of the following, to-wit:

Complaint.
Motion of defendants to strike from complaint.
Order denying defendants' motion to strike.
Demurrer.
Order overruling demurrer.
Answer.
Reply.
Verdict.
Judgment.
Petition for writ of error.
Assignment of errors.
Order allowing writ of error.
Bond upon writ of error.
Writ of error.
Citation.
Certificate of Judge.

Respectfully,

SHANK, BELT & FAIRBROOK,
Attorneys for C. J. Erickson.
McCLURE & McCLURE,
Attorneys for United States Fidelity and Guaranty Company.

92 Service of the within paper is hereby admitted this 17 day of August, 1922.

CAREY & KERR,
OMAR C. SPENCER,
THOS. P. REVELLE,
Attorneys for Plaintiffs.

Indorsed: Filed in the United States District Court, Western District of Washington, Northern Division, Aug. 21, 1922. F. M. Harshberger, Clerk.

93 United States District Court, Western District of Washington, Northern Division.

No. 6331.

UNITED STATES OF AMERICA and UNITED STATES SPRUCE PRODUCTION CORPORATION, a Corporation, Plaintiffs,

vs.

C. J. ERICKSON and UNITED STATES FIDELITY AND GUARANTY COMPANY, a Corporation, Defendants.

Certificate of Clerk U. S. District Court to Transcript of Record.

UNITED STATES OF AMERICA,
Western District of Washington, ss:

I, F. M. Harshberger, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record consisting of pages numbered from 1 to 92, inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause, as is required by præcipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on return to writ of error herein, from the judgment of said United States District Court for the Western District of Washington, to the Supreme Court of the United States.

I further certify the following to be a full, true and correct statement of all expenses and costs incurred and paid in my office by or on behalf of the plaintiff in error for making record, certificate or return to the Supreme Court of the United States in the above entitled cause, to wit:

94

Clerk's fees, (Sec. 828, R. S. U. S.) for making record, certificate or return, 226 folios at 15c	$33.90
Certificate of Clerk to transcript of record, 4 folios at 15c	.60
Seal to said certificate	.20
Total	$34.70

I hereby certify that the above cost for preparing and certifying record, amounting to $34.70, has been paid to me by attorney for Plaintiff in Error.

I further certify that I hereto attach and herewith transmit the original writ of error and the original citation issued in this cause.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court at Seattle, in said District, this 12th day of September, 1922.

[Seal of the United States District Court, Western District of Washington.]

F. M. HARSHBERGER,
Clerk United States District Court,
Western District of Washington.

95 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judges of the District Court of the United States for the Western District of Washington, Northern Division, Greeting:

Because of the records and proceedings and also in the rendition of the judgment of a plea which is in said district court before you between United States of America and the United States Spruce Production Corporation, a corporation, plaintiffs, and C. J. Erickson and United States Fidelity and Guaranty Company, a corporation, defendants, a manifest error has happened to the great damage of the said C. J. Erickson and United States Fidelity and Guaranty Company, a corporation as by their complaint appears. We being willing that the error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you that if judgment be therein given that under your seal distinctly and openly you send the record and proceedings as aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the city of Washington on the 13th day of October next in the said supreme court, to be then and there held; that the record and proceedings aforesaid being inspected, the said supreme court may cause further to be done to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the 14th day of August, in the year of our Lord one thousand nine hundred and twenty-two and of the independence of the United States of America the one hundred and forty-eighth.

[Seal of the United States District Court, Western District of Washington.]

F. M. HARSHBERGER,
Clerk of the District Court of the United States
for the Western District of Washington.

Allowed by
EDWARD E. CUSHMAN,
District Judge.

95½ [Endorsed:] No. 6331. United States District Court for the Western District of Washington, Northern Division.

United States of America and United States Spruce Production Corporation, a corporation, Plaintiffs, vs. C. J. Erickson, Defendants. Writ of Error. Filed in the United States District Court, Western District of Washington, Northern Division. Aug. 14, 1922. F. M. Harshberger, Clerk, by S. E. Leitch, Deputy. Corwin S. Shank, H. C. Belt, Glenn J. Fairbrook, Attorneys for C. J. Erickson, Alaska Building, Seattle.

96 & 97 UNITED STATES OF AMERICA, *ss:*

To United States of America and the United States Spruce Production Corporation, a corporation, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at the City of Washington, on the 13th day of October next, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, wherein C. J. Erickson and United States Fidelity and Guaranty Company, a corporation, are plaintiffs in error and you are defendants in error, to show cause if any there be why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned should not be corrected and speedy justice be done to the parties in that behalf.

Given under my hand at the City of Seattle in the district above named this 14th day of August, in the year of our Lord one thousand nine hundred twenty-two.

[Seal of the United States District Court, Western District of Washington.]

EDWARD E. CUSHMAN,
Judge of the District Court of the United States for the Western District of Washington, Northern Division.

98 [Endorsed:] No. 6331. United States District Court for the Western District of Washington, Northern Division. United States of America and United States Spruce Production Corporation, a corporation, Plaintiffs, vs. C. J. Erickson, et al., Defendants. Citation. Filed in the United States District Court, Western District of Washington, Northern Division. Aug. 14, 1922. F. M. Harshberger, Clerk, by S. E. Leitch, Deputy. Corwin S. Shank, H. C. Belt, Glenn J. Fairbrook, Attorneys for C. J. Erickson, Alaska Building, Seattle. Service of the within paper is hereby admitted this 17 day of Aug., 1922. Carey, Kerr, Omar C. Spencer, Attorney for Thos. P. Revelle, Plaintiff.

Endorsed on cover: File No. 29,156. W. Washington, D. C. U. Term No. 606. C. J. Erickson and United States Fidelity and Guaranty Company, plaintiffs in error, vs. The United States of America and United States Spruce Production Corporation. Filed September 22, 1922. File No. 29,156.

Brief of Plaintiffs in Error

Supreme Court of the United States

OCTOBER TERM, 1923.

No. 125

C. J. ERICKSON and UNITED STATES FIDELITY AND GUARANTY COMPANY,
Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA and UNITED STATES SPRUCE PRODUCTION CORPORATION,
Defendants in Error.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON.

CORWIN S. SHANK,
Attorney for plaintiff in error, C. J. Erickson,
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The United States Fidelity
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Press of Frank L. Allen Co., Seattle

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THE UNITED STATES OF AMERICA and UNITED STATES SPRUCE PRODUCTION CORPORATION,

Defendants in Error.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON.

STATEMENT OF THE CASE.

This was an action brought to recover a sum of money alleged to be due by reason of various breaches of certain contracts entered into between the defendant in error, United States Spruce Production Corporation, a corporation organized under the laws of the state of Washington, and the plaintiff in error, C. J. Erickson, a resident and citizen

of the state of Washington, for the sale of certain logs belonging to the Spruce Corporation. The plaintiff in error, United States Fidelity & Guaranty Co., was joined as a defendant in the action because it had given a bond to the Spruce Corporation to secure the performance of the contract by Mr. Erickson.

In an attempt, however, to give jurisdiction to the federal court, the Spruce Corporation procured the United States of America to become a party plaintiff with it. The supposed connection of the United States of America with the litigation is set forth at length in paragraphs II. to VIII., inclusive, of the complaint, (Tr. pp. 2-4) but can be completely and accurately stated in the language contained in an opinion of this court in which the same corporation is involved, the case being that of *Clallam County vs. U. S. of America*, Case No. 255 of the October term, 1923, decided November 26, 1923, where the court said:

> "In short, the Spruce Production Corporation was organized by the United States as an instrumentality for carrying on the war, all its property was conveyed to it by or bought with money coming from the United States, and was used by it solely as means to that end, and when the war was over it stopped its work except so far as it found it necessary to go on in order to wind up its affairs. When the winding up is accomplished there will be a loss; but whatever assets may be realized will go to the United States."

The plaintiff in error moved to strike all the matter relating to the organization of the Spruce Corporation, other than that it was a corporation created under the laws of the state of Washington, upon the ground that all such matter was irrelevant and immaterial, (Tr. pp. 32-33) but this motion was by the district court denied. (Tr. p. 34.)

The defendants then demurred to the complaint upon the ground that it appeared upon the face thereof that the court had no jurisdiction of the subject matter of the action, (Tr. p. 35) but this demurrer was by the district court overruled. (Tr. pp. 35-36.) The defendants then, by answer, denied particularly that the action was any suit authorized under the constitution or any law of the United States, and denied particularly that the United States of America had any legal interest in the cause of action therein set forth, or was a necessary or proper party thereto. (Tr. p. 36.)

The matter came on duly for trial and judgment was rendered in favor of defendants in error and against the plaintiffs in error, from which judgment these plaintiffs in error have prayed a writ of error to issue from this court for the purpose of reversing the judgment upon the sole ground that the United States District Court was without jurisdiction of the subject matter of the action.

ASSIGNMENTS OF ERROR.

We respectfully make the following assignments of error, to-wit:

1. The court erred in denying the motion of the defendants to strike from the complaint.

2. The court erred in overruling the demurrer of the defendants.

3. The court erred in assuming jurisdiction of the cause.

4. The court erred in entering judgment in favor of the plaintiffs and against the defendants for the reason that the court was without jurisdiction to enter judgment.

ARGUMENT.

We will discuss the assignments of error herein under two heads:

1. This action did not arise under the constitution or any law of the United States.

2. The United States of America not being either a necessary or proper party to this action, the mere joining of the United States of America as a nominal party could not give to the United States District Court jurisdiction of the case.

I.

This Action Did Not Arise Under the Constitution or any Law of the United States.

It is true that the counsel who drafted this complaint made a great parade of various statutes of the United States relating to the carrying on of the war, the organization of the Spruce Production Division of the United States War Department, the authorization of the Secretary of War to organize this corporation and various other matters. The real cause of complaint, however, was that the Spruce Corporation, a corporation organized under the laws of the state of Washington, and which had in all respects complied with the laws of that state entitling it to transact business therein, had sold certain logs to C. J. Erickson, a resident and citizen of the state of Washington, and Mr. Erickson had failed to pay for them.

It is immaterial whether the Secretary of War and his subordinates were authorized to organize this corporation, or whether their actions in so doing were a breach of trust or even a felony; it makes no difference whether the money which the federal officers invested in this corporation was properly invested or whether it amounted to an embezzlement on their part. It is even immaterial whether the stock of this corporation had been subscribed at all.

Pierce Co. Dairymen's Ass'n. vs. Templin, 124 Wash. 567, 570.

Wash. Co-op. Egg & Poultry Ass'n. vs. Taylor, 122 Wash. 466, 472.

American Radiator Co. vs. Kinnear, 56 Wash. 210, 212.

Carroll vs. Pacific National Bank, 19 Wash. 639, 641, 642.

Ivy Press vs. McKechnie, 88 Wash. 643, 651.

Whitney vs. Wyman, 11 Otto 392, 25 L. Ed. 1050.

D. R. Wilder Mfg. Co. vs. Corn Products Ref. Co., 236 U. S. 165, 171, 59 L. Ed. 520, 525.

In order that this point may be made more clear, let us assume either that the stock of this corporation never had been subscribed, or that its incorporation and organization never had been authorized by the United States Government.. Would that have made the slightest difference in an action wherein it was seeking to recover the purchase price of goods which it had sold? The answer to this question is found in the above citations, both from this court and from the supreme court of the state of Washington holding that, in the absence of a statute, no defect in the incorporation of a corporation can be taken advantage of in an action between the corporation and a third party who has dealt with such corporation on a basis of its being a valid corporation.

To quote from *Washington Co-op. Egg & Poultry Ass'n. vs. Taylor*, 122 Wash. 466, 472:

> "Appellant also contends that the proof shows that, when his contract was entered into, the respondent's capital stock had not been subscribed and paid in as the statute requires. Appellant having made his contract with the respondent, is in no position to contend that it was not entitled to engage in business because its capital stock had not been subscribed or paid in as the statute requires."

It being immaterial whether the organizers of this company either acted lawfully or criminally in organizing it, there was no question involved in this case which arose out of the constitution or any law of the United States and therefore the United States District Court had no jurisdiction on that ground.

> "For while it is true that a plaintiff by his first pleading determines what right he will sue on, and that the defenses, set up either anticipatorily by him or in due course by the defendant, cannot affect the jurisdiction when it depends on that right, yet the plaintiff may not, by alleging a frivolous claim or a fictitious situation, confer upon a court jurisdiction which, as determined by the plaintiff's real cause of action, it has not." *Lambert Run Coal Co. vs. B. & O. R. R. Co.*, 258 U. S. 377, 383, 66 L. Ed. 671, 675.

A mere formal statement in a bill that a federal question exists is not sufficient to support the jurisdiction of a federal district court. The allegations must show that the suit is one which really and substantially involves a dispute or controversy as to a

right which depends on the construction or application of the Constitution or some law or treaty of the United States.

South Covington & C. St. Ry. Co. vs. City of Newport, 259 U. S. 97, 66 L. Ed. 842.

Norton vs. Whiteside, 239 U. S. 144, 60 L. Ed. 186.

Hull vs. Burr, 234 U. S. 712, 720, 58 L. Ed. 1557, 1562.

Defiance Water Co. vs. Defiance, 191 U. S. 184, 48 L. Ed. 140.

Arbuckle vs. Blackburn, 191 U. S. 405, 413, 48 L. Ed. 239, 241.

Bankers' Mut. Casualty Co. vs. Minneapolis St. P. & S. St. M. Ry. Co., 192 U. S. 371, 383, 48 L. Ed. 484, 489.

Provident Savings L. Assurance Soc'y. vs. Ford, 114 U. S. 635, 29 L. Ed. 261.

Metcalf vs. City of Watertown, 128 U. S. 586, 32 L. Ed. 543.

St. Joseph & G. I. R. Co. vs. Steele, 167 U. S. 659, 42 L. Ed. 315.

Blumenstock Bros. Ad. Agency vs. Curtis Pub'g Co., 252 U. S. 436, 441, 64 L. Ed. 649, 652.

Newburyport Water Co. vs. Newburyport, 193 U. S. 561, 576, 48 L. Ed. 795, 799.

Denver vs. New York Trust Co., 229 U. S. 123, 133, 57 L. Ed. 1101, 1120.

A suit does not arise under the constitution or laws of the United States unless it really or sub-

stantially involves a dispute or controversy as to the effect or construction of the constitution or laws upon the determination of which the result depends.

Arbuckle vs. Blackburn, 191 U. S. 405, 413, 48 L. Ed. 239, 241.

McCain vs. DesMoines, 174 U. S. 168, 43 L. Ed. 936.

Newburyport W. Co. vs. Newburyport, 193 U. S. 561, 576, 48 L. Ed. 795, 799.

Bankers M. C. Co. vs. M. St. P. & S. St. M. R. Co., 192 U. S. 371, 48 L. Ed. 484.

II.

The United States of America Not Being Either a Necessary or Proper Party to This Action, the Mere Joining of the United States of America as a Nominal Party Could Not Give to the United States District Court Jurisdiction of the Case.

The theory of the drafter of this complaint, and of the District Court, seemed to be that, because the United States of America was the sole stockholder of this corporation, and would therefore ultimately obtain all the assets of the corporation that were left upon its dissolution, it therefore had a right to join with the corporation in this action as a party plaintiff and thereby give the United States District Court jurisdiction of the action. This identical point appears never to have been submitted to this court except in the one case of *Clallam County vs. United States of America*, Case

No. 255 of the October term, 1923, decided November 26, 1923, involving this same corporation. That case was a case brought by the Spruce Corporation against a county of the state of Washington to cancel certain taxes levied by the county against the property of the corporation. The United States of America was „ ned as a party plaintiff, as it is in this case, solely by reason of its supposed interest in the result of the litigation, and the same District Court, by Judge Neterer, upheld its jurisdiction in that case by reason of the United States of America being joined as a party plaintiff, saying:

> "The defendants have moved to dismiss on the ground that the United States is not a proper or necessary party, and therefore no diversity of citizenship is present. In harmony with the holding of this court in *United States vs. Sears, et al.*, (no opinion filed) the United States is a proper party. The motion to dismiss is therefore denied."

From the judgment rendered in that case an appeal was taken to the United States Circuit Court of Appeals for the Ninth Circuit and that court certified two questions to this court, one of which was: "Whether the district court of the United States had jurisdiction of this suit." This court held that the District Court of the United States had jurisdiction of this suit, but ignored the ground of jurisdiction found by the District Court, and placed the jurisdiction of the District Court upon the immunity of the property of the Spruce Cor-

poration from taxation claimed under the constitution of the United States, which it held that the Spruce Corporation in its own right was entitled to claim. We take it, therefore, that the question of the jurisdiction of the United States District Court, by reason of the fact that the United States of America merely appeared in an action for the sake of exerting its influence in favor of a party plaintiff, is either an open question in this court, or that in the above cited case it had been decided adversely to the jurisdiction.

In the *Clallam County* case *supra*, this court decided that the Spruce Corporation insofar partook of the sovereignty of the federal government as to be able to claim an immunity from state taxation, and in the case of *U. S. Grain Corporation vs. Phillips*, (case No. 290 of the October term, 1922, decided February 19, 1923,) this court decided that the Grain Corporation (a corporation similar to the Spruce Corporation) so far partook of the sovereignty of the federal government as to enable it to require an officer of the United States Navy to transport gold belonging to it without extra compensation. This court has further, in *U. S. vs. Walter*, (Case No. 20, of October term, 1923, decided October 22, 1923,) decided that a conspiracy to defraud the United States Emergency Fleet Corporation was included within §37 of the Criminal Code punishing a conspiracy "to defraud the United States in any manner or for any purpose."

Each of these three cases, however, is readily distinguishable from the case at bar. All of these corporations were organized for the purposes of carrying on the war and a diminution of the assets of any of these corporations was by so much a diminution of the assets of the United States Government, which were being used directly in carrying on government work. We could not state the distinction between the above cases and the case at bar better than by quoting from *United States Spruce Production vs. Lincoln County*, 285 Fed. 388, (U. S. D. C., Ore.) which is cited with approval by this court in the *Clallam County* case:

> "It has been determined that the Shipping Board Emergency Fleet Corporation is not a government organization or agency, possessing the attributes of sovereignty in the sense that it is entitled to immunity from suit in the courts, and that suitors have their ordinary remedies against it without being relegated to the Court of Claims. *Sloan Shipyards Corporation et al. vs. United States Shipping Board Emergency Fleet Corporation*, and allied cases (Nos. 308, 376, 526, October term, 1921) 258 U. S. 549, 42 Sup. Ct. 386, 66 L. Ed. ..... It may be assumed that the United States Spruce Production Corporation occupies like relation to the general government. * * * The plaintiff corporation, while a private concern, was utilized as a government agency in prosecuting the exigencies of war. The very property which stands in the name of the agent was employed to meet such exigencies. It was acquired for

such purposes, and, if denied its use, the agent would have been helpless. It could not have met the demands upon it for conserving war needs. In short, its operations would have been impeded, if not wholly balked and prevented. Thus it is obvious that, while the holdings described in the complaint in one sense are the property of the plaintiff, they are the vital means by which the government was enabled to carry out its chief purposes in prosecuting the war to a successful termination."

On the other hand, whenever the status of any of these war corporations, *insofar as jurisdiction of courts is concerned*, has been brought to the attention of this court, it has uniformly held that these corporations had exactly the same rights to sue and the same immunities from being sued as any private corporation and no more.

Sloan Shipyards Corporation vs. U. S. Shipping Board Emergency Fleet Corporation, 258 U. S. 549, 66 L. Ed. 762,

and other cases heard at the same time.

U. S. vs. Strang, 254 U. S. 491, 65 L. Ed. 368.

We would particularly call this court's attention to the last of the three cases which were argued and decided together, and appear in 258 U. S. 548, to-wit: In the matter of the *Eastern Shore Shipbuilding Corporation, Bankrupt, U. S. Emergency Fleet Corporation representing the United States of America, petitioner, vs. Roger B. Wood, trustee in bankruptcy.* In that case the Emergency Fleet

Corporation was exerting a claim of priority in bankruptcy by reason of its being an instrumentality of the government of the United States, but this court upheld the decision of the lower courts, which was placed specifically upon the ground "that the Fleet Corporation was a distinct entity, and that, whatever might be the law as to a direct claim of the United States, the Fleet Corporation stood like other creditors and was not to be preferred." If the relation of the United States to one of these war corporations is not sufficient to give to a debt due to such corporation the status of a debt due to the United States Government, it must follow therefrom that such relation is not sufficient to give to a federal court jurisdiction of such a claim. Such a claim is either a debt due to the United States or it is not. It was held in the above cited case that it was not a debt due to the United States and it not being a debt due to the United States the United States District Court had no jurisdiction over an action brought to enforce it.

Applying the principle announced in the case of *Wood, Trustee*, last above mentioned, the federal jurisdiction of this case cannot by any possible reasoning be sustained. If Erickson had been adjudicated a bankrupt, the Spruce Corporation could have filed a claim but the United States Government could not, nor would the bankruptcy court upon the petition of the United States Government have adjudicated the Spruce Corporation's claim to be preferred over other creditors. However, by another

avenue the Spruce Corporation has secured exactly the thing that the court held against in the case of *Wood, Trustee*. The Spruce Corporation has been able by the methods employed, to establish a claim that is preferred as to other creditors because its claim is a joint judgment in which the United States Government is one of the parties. In other words, the Spruce Corporation had a claim but no right to invoke the jurisdiction of the federal court; the United States Government had the right to invoke the jurisdiction of the federal court but no claim. By agreement to join their respective rights each gets what it would not otherwise be entitled to—a claim against Erickson and the right to assert that claim in the federal courts.

The joining of the United States in an action merely for the purpose of giving the federal court jurisdiction of a suit for a money judgment appears to have been attempted in this case for the first time. A similar attempt was made, however, at one time in the history of the country to give this court jurisdiction over actions brought against states for money judgments for debts due to private individuals, by the states lending their name to such litigation; but this court in those cases held that the fact that a state is a party does not give the Supreme Court jurisdiction over an action where the state was merely a nominal party.

State of New Hampshire vs. The State of Louisiana,

State of New York vs. State of Louisiana, 108 U. S. 76, 27 L. Ed. 656.

In these cases the question, as stated in the opinion of this court, was whether private individuals "can sue in the name of their respective states after getting the consent of the state, or, to put it in another way, whether the state can allow the use of its name in such a suit for the benefit of one of its citizens," and this question was answered emphatically in the negative. This case was cited with approval and the principle upheld in the recent case of *Massachusetts vs. Mellon,* (No. 24, October term, 1922, decided June 4, 1923).

The same principle was involved in the case of *Curtner vs. U. S.,* 149 U. S. 662, 37 L. Ed. 890, where the United States brought an action to set aside certain patents. It appeared, however, that the United States had no actual interest in the litigation, but had brought the action merely for the benefit of third parties and this court quoted from *U. S. vs. San Jacinto Tin Co.,* 125 U. S. 273, 285, as follows:

> "But we are of opinion that since the right of the government of the United States to institute such a suit depends upon the same general principles which would authorize a private citizen to apply to a court of justice for relief against an instrument obtained from him by fraud or deceit, or any of those other practices which are admitted to justify a court in granting relief, the government must show that, like the private individual, it has such an interest

in the relief sought as entitles it to move in the matter. If it be a question of property a case must be made in which the court can afford a remedy in regard to that property; if it be a question of fraud which would render the instrument void, the fraud must operate to the prejudice of the United States; and if it is apparent that the suit is brought for the benefit of some third party, and that the United States has no pecuniary interest in the remedy sought, and is under no obligation to the party who will be benefitted to sustain an action for his use; in short, if there does not appear any obligation on the part of the United States to the public, or to any individual, or any interest of its own, it can no more sustain such an action than any private person could under similar circumstances.

"In all the decisions to which we have just referred it is either expressed or implied that this interest or duty of the United States must exist as the foundation of the right of action. Of course this interest must be made to appear in the progress of the proceedings, either by pleadings or evidence, and if there is a want of it, and the fact is manifest that the suit has actually been brought for the benefit of some third person, and that no obligation to the general public exists which requires the United States to bring it, then the suit must fail."

Furthermore, it has always been the rule of this court that the presence of a merely nominal party neither gave jurisdiction to nor took jurisdiction from the United States Federal Court.

Thus, where the real plaintiff was mentioned as the defendant, and was of the same citizenship as the other defendants, jurisdiction by reason of diversity of citizenship did not exist.

Niles-Bement-Pond Co. vs. Iron Moulders Union, 254 U. S. 77, 65 L. Ed. 145.

Steele vs. Culver, 211 U. S. 26, 53 L. Ed. 74.

Dawson vs. Columbia Ave. S. F. S. D. T. & T. Co., 197 U. S. 178, 49 L. Ed. 713.

Where a nominal defendant who was not a necessary party was a citizen of the same state as the plaintiffs, that fact did not deprive the federal court of jurisdiction.

Bacon vs. Rives, 16 Otto 99, 27 L. Ed. 69, 70.

Walden vs. Skinner, 11 Otto 577, 25 L. Ed. 963, 968.

Pac. R. R. Co. vs. Ketchum, 11 Otto 289, 25 L. Ed. 932, 936.

The presence of an unnecessary party will not defeat jurisdiction of a federal court.

Ex Parte Nebraska, 209 U. S. 436, 52 L. Ed. 876, 880.

The rights of removal cannot be defeated by the fraudulent joinder of a resident defendant having no real connection with the controversy.

Wilson vs. Republic Iron & Steel Co., 257 U. S. 92, 66 L. Ed. 144.

Wecker vs. National Enameling & S. Co., 204 U. S. 176, 51 L. Ed. 430.

Chesapeake & O. R. Co. vs. Cockrell, 232 U. S. 146, 58 L. Ed. 544.

Illinois C. R. Co. vs. Sheegog, 215 U. S. 308, 54 L. Ed. 208.

Similarly, where the damages have clearly been magnified in order to give the federal court jurisdiction, that court has no jurisdiction.

Globe Refining Co. vs. Landa Cotton Oil Co., 190 U. S. 540, 47 L. Ed. 1171, 1172.

North American T. & T. Co. vs. Morrison, 178 U. S. 262, 44 L. Ed. 1061.

Vance vs. Vandercook Co., 170 U. S. 468, 42 L. Ed. 1111, 1113.

Shacker vs. Hartford F. Ins. Co., 3 Otto 241, 23 L. Ed. 862.

Smithers vs. Smith, 204 U. S. 632, 643, 51 L. Ed. 656, 660.

A corporation is for jurisdictional purposes a citizen of the state of its organization, regardless of the status of its stockholders.

Louisville C. & C. R. R. Co. vs. Selson, 2 How. 497, 554, 11 L. Ed. 353, 376.

Marshall vs. B. & O. R. R. Co., 16 How. 314, 328, 14 L. Ed. 953, 959.

Covington Drawbridge Co. vs. Shepherd, 20 How. 227, 15 L. Ed. 896.

We thus see that it has been the uniform rule in this court that a party can not give jurisdiction to the federal court either by joining an unnecessary party or by alleging a fictitious federal question

which has no bearing upon the point of issue. The cause of action in this case was merely a debt due from a citizen of the state of Washington to a Washington corporation for goods sold and delivered, and of such a case the federal court had no jurisdiction and the district court should have so held and dismissed the action for lack of jurisdiction.

Respectfully submitted,

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C. J. Erickson.

HENRY F. McCLURE,
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United States Fidelity & Guaranty Company.

No. 125.

In the Supreme Court of the United States.

OCTOBER TERM, 1923.

C. J. ERICKSON AND UNITED STATES FIDELITY AND GUARANTY COMPANY, PLAINTIFFS IN ERROR,

v.

THE UNITED STATES OF AMERICA AND UNITED STATES SPRUCE PRODUCTION CORPORATION.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON.

BRIEF FOR DEFENDANTS IN ERROR.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1924

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CITATIONS.

contracts related, among other things, to the sale by the Corporation to Erickson of certain logs lying along the right-of-way of a logging railroad owned by the Corporation and the transportation over this railroad by Erickson of these and other logs and material to his sawmill. (R. 13–27.)

The complaint names as plaintiffs the United States and the Corporation, and as defendants Erickson and the United States Fidelity and Guaranty Company. The Corporation is alleged to be "a corporation organized under and pursuant to certain acts of Congress under the laws of the State of Washington as a corporation of that State," and the United States is joined as a party plaintiff "to protect its interests." Erickson is asserted to be a citizen of Washington and the defendant United States Fidelity and Guaranty Company "a corporation organized under the laws of the State of Maryland and a citizen of that State." The latter was made a party defendant because it had given a bond to secure the faithful performance by Erickson of his contract. The complaint further alleges that the suit is one arising under the Constitution and laws of the United States and involves over $3,000 in amount, exclusive of interest and costs. (R. 1.)

In order to show the interest of the United States in the subject-matter of the suit, Paragraphs II to VIII, inclusive, of the complaint trace in detail the activities of both the Legislative and Executive Branches of the Federal Government looking toward

the production of lumber and other materials for use in the manufacture of the aircraft needed by this country and its allies in the World War. (R. 2–6; see also Certificate, R. 49–52.) Among such activities was the acquirement of a right of way for the railroad involved in this suit and commencement of the construction of that railroad under the direction of agencies of the President and the Secretary of War. One of the final steps in the governmental development of this aircraft project was the creation by the Director of Aircraft Production of the Federal War Department of the United States Spruce Production Corporation. Authority for this action was contained in the Act of July 9, 1918 (40 Stat. c. 143, p. 888), a summary of which is given on page 8 of this brief. While incorporated at the direction of Congress, a charter of the State of Washington was secured.

After the formation of the Corporation, but prior to the Armistice, the logging railroad and other properties which had theretofore been acquired by the United States in connection with the production of aircraft material were transferred to that Corporation. The complaint alleges that while the railroad "was built for and acquired by and became the property of the United States * * * the title thereto was transferred to the plaintiff corporation and still is carried in the name of that corporation for convenience." (R. 4.)

Several facts point to the conclusion that the contracts concerned in this suit were but steps in the

liquidation of the assets of the Corporation preliminary to its ultimate dissolution, although the removal of a fire hazard on a small portion of the right-of-way of the railroad was an incidental object. (R. 4, 6, 10, 12.) The Act of July 9, 1918, Section 3, directed that the Secretary of War should institute proceedings for the dissolution of the Corporation within one year after the signing of a treaty of peace. The complaint alleges that at the time of the Armistice the work of getting out aircraft material was mostly suspended, although some operations necessarily continued for a period of months after that date (R. 4; 51); the contracts were entered into on April 21, 1919, and July 30, 1920, respectively—after the Armistice (R. 6, 8, 13, 20); considered together, they contemplated a period of operation which might extend to July 30, 1921 (R. 26); provision was made in them for possible sale of the railroad by the Corporation (R. 19, 25, 26); and this Court in the recent case of *Clallam County* v. *United States* (decided Nov. 26, 1923; No. 255, Oct. Term, 1923, 44 Sup. Ct. Rep. 121), involving the same Corporation, said that since the Armistice the activities of the Corporation have been directed to liquidating its affairs, "although to accomplish it some further contracts have been made, but, as we understand, solely for that end."

The defendants moved to strike out all of those allegations of Paragraphs II to VIII of the complaint which tended to show the interest of the United States in the suit on the ground that they were irrelevant and immaterial. (R. 32, 33; 54.)

Why that motion failed to include the ninth paragraph of the complaint, which shows even more decisively the Government's interest, seems strange. That paragraph reads (R. 5–6):

> IX. The incorporators of the said corporation were officers of the United States Army and in so incorporating they acted for and in behalf of the United States of America. All of the shares of the corporation, except qualifying shares, were subscribed by the Director of Aircraft Production. All of the capital used by the corporation in its operations was furnished by the United States Government. The qualifying shares were taken in the name of the trustees of the corporation, who from time to time have held one share each to qualify them to serve in that capacity, but none of the said trustees has any interest in the corporation, and each of the trustees holds the shares of stock standing in his name solely as representative of and for the use and benefit of the United States. Each of the trustees has in writing assigned to the Secretary of War, for the benefit of the United States, any and all moneys, profits or dividends that might accrue upon the stock held by him, and each has certified that the share of stock standing in his name was issued solely for the purpose of qualifying him as trustee of the corporation. No dividends are payable to or have been paid to the stockholders, and the trustees have received no compensation except for services rendered otherwise than as trustees. Some time after organization, on the advice of the Director of Aircraft Produc-

tion, the articles of incorporation were so amended as to confine the powers thereof to those mentioned in the foregoing Act of Congress of July 9, 1918, Chapter 16, entitled "An Act Making Appropriations for the Support of the Army," etc., and upon the advice of the Director of Aircraft Production, the by-laws of the corporation were so amended that the trustees were made removable by a majority of the outstanding shares, so that, as the government has all but the qualifying shares, the several trustees are removable by the government at will. At all times since the organization of the corporation the president thereof has been an officer of the United States Army, and during its activities nearly all of the officers and agents were officers of the United States Army, or enlisted men thereof. Two of the four trustees are at present officers of the United States Army, specially assigned to such duty. Nearly all of the men employed in the building of the railroad were of the United States Army, and all acts of the trustees, the officers and agents of the corporation, have at all times been performed under the direction of and in accordance with the instructions of the Secretary of War or the Chief of Air Service, or the Director of Aircraft Production. The work undertaken by the corporation, as herein described, was planned by the Director of Aircraft Production, who reported the same to the Secretary of War, who gave his approval thereof, and after the organization of the corporation as herein described there was transferred to the corporation by the said

officers all contracts between the United States and others for the production of such war material and for the construction of the railroad, and the property has ever since been held under their directions pursuant to the said Acts of Congress, and said corporation is an agency, arm, or instrumentality of the United States, and upon liquidation of its assets, pursuant to the terms of the said Acts of Congress, all of the proceeds thereof will be paid into the treasury of the United States and no one will receive any profit or dividend therefrom. The said corporation is not engaged in commercial business, nor has it ever engaged in any other business save as herein stated. No person, firm, or individual has any interest, right, title or estate in or to any shares of stock of that corporation, or in or to any property owned or held by that corporation, and all of its functions as a corporation are carried out in the manner described for war purposes of the United States.

The District Court denied the motion to strike (R. 34; 54), whereupon the defendants demurred to the complaint on the ground that it showed upon its face that the court was without jurisdiction of the subject matter of the action. (R. 35; 54.) The District Court has certified that at the hearing on this demurrer, as well as upon the motion to strike, the defendants raised the question of the jurisdiction of that court "as a Federal Court to hear and determine the said cause and asserted that the United States of America was neither a necessary nor proper party to

the said action, and that therefore the said cause of action being solely a cause of action founded on a contract between a corporation organized under the laws of the State of Washington on the one part and a citizen and resident of the State of Washington on the other part, the said court was without jurisdiction to hear and determine the same." (R. 54.) The court overruled the demurrer. (R. 35, 36; 54.)

Thereafter the defendants answered (R. 36–41); the plaintiffs replied (R. 41–42); the case went to trial; and a verdict and judgment resulted in favor of the plaintiffs and against the defendant Erickson for $45,710.70 and against the defendant United States Fidelity and Guaranty Company for $20,000, the amount of its bond. (R. 43–45.)

Points involved.

The Government asserts that the District Court possessed jurisdiction of this action because—

I. The United States is a proper party plaintiff.

II. The Spruce Production Corporation is an instrumentality, and as such an integral part, of the "United States." Therefore it is the "United States" for jurisdictional purposes under Section 24 of the Judicial Code.

III. The case arises under the laws of the United States.

Statutory provisions.

The Act of July 9, 1918 (40 Stat. c. 143, p. 888), which authorized the Director of Aircraft Production to form the United States Spruce Production Corporation, may be summarized as follows:

(Sec. 1) That the Director of Aircraft Production might form, under the laws of the

District of Columbia or those of any State, corporations for the production of aircraft, equipment, and materials and for the building and operation of railroads in connection therewith; (Sec. 2) That he might, on behalf of the United States purchase not less than a majority of the voting stock and all or part of the nonvoting stock, bonds, notes, debentures, or other securities, and with the approval of the Secretary of War might sell the same, provided that the United States should never become a minority holder of voting stock therein; (Sec. 3) That, within one year after the signing of a treaty of peace he should institute proceedings for dissolution; (Sec. 4) That the Secretary of War might assign enlisted men or commissioned officers to carry on the work of such corporations; (Sec. 5) And that the Secretary of War, acting through the Director of Aircraft Production, might transfer to such corporations "any interest of the United States in any existing contracts for aircraft, aircraft equipment, or materials therefor, and the title to any lands, plants, railroads, or equipments used in or in connection with the production of aircraft, aircraft equipment, or materials therefor, on such terms as the Secretary of War, acting through the Director of Aircraft Production, shall deem fit."

The Judicial Code, Section 24, Paragraph 1, provides that—

> The district courts shall have original jurisdiction * * * of all suits of a civil nature, at common law or in equity, brought by the

United States * * * or, where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars, and (a) arises under the Constitution or laws of the United States * * *.

ARGUMENT.

I.

The United States has such an interest in this litigation as to make it a proper party plaintiff.

The Government admits that the Spruce Production Corporation alone could have brought suit to recover for breach of the contracts. (*Sloan Shipyards case*, 258 U. S. 549.) It does not contend, therefore, that the United States is an indispensable party to this litigation, but it does assert that as the Corporation was organized by the Federal Government solely "as an instrumentality for carrying on the war" and as all its property was acquired and used for that purpose (*Clallam County case, supra*), the United States had not only a pecuniary interest in the liquidation of its instrumentality, but owed such a duty to the public in the premises as to constitute it a proper party plaintiff.

(*a*) It has long been recognized that the United States may sue where it has a pecuniary interest in the subject matter of the controversy. (*Dugan* v. *United States*, 3 Wheat. 172, 180; *Cotton* v. *United States*, 11 How. 229, 231. See also *United States* v. *Burrill*, Amer. Ann. Cases, 1912 D, page 512 (107 Me. 382), and exhaustive note at page 514 on "Right of United States to Maintain Civil Action.")

The *Dugan case* is of value also in showing that this Court will not permit mere form to deter it from look-

ing beneath the surface and determining the interest of a party litigant. In that case a bill of exchange had been indorsed to the Treasurer of the United States, who received it in that capacity and for the account of the United States. The bill had been purchased by the Secretary of the Treasury (as one of the Commissioners of the Sinking Fund, and as agent of that Board) with money of the United States. The bill was afterwards indorsed *in full* by the Treasurer of the United States to W. & S., and by them presented to the drawees for acceptance. It was protested for nonacceptance and nonpayment, and sent back by W. & S. to the Secretary of the Treasury. The Court not only looked behind the indorsement to the Secretary of the Treasury but that of the Secretary in full to W. & S., and held that the latter acted merely as agents of the United States for the collection of the instrument, and that the United States was the real party in interest and entitled to bring suit on the bill against the first indorser. In its opinion, the Court said (3 Wheat. 180, 181):

> If it be generally true, that when a bill is indorsed to the agent of another, for the use of his principal, an action can not be maintained, in the name of such principal (on which point no opinion is given), the Government should form an exception to such rule, and the United States be permitted to sue in their own name, whenever it appears, not only on the face of the instrument, but from all the evidence, that they alone were interested in the subject-matter of the controversy. There is a fitness

> that the public, by its own officers, should conduct all actions in which it is interested, and in its own name; and the inconveniences to which individuals may be exposed in this way, if any, are light, when weighed against those which would result from its being always forced to bring an action in the name of an agent. Not only the death or bankruptcy of an agent may create difficulties, but set-offs may be interposed against the individual who is plaintiff, unless the court will take notice of the interest of the United States; and if they can do this to prevent a set-off, which courts of law have done, why not at once permit an action to be instituted in the name of the United States?

See also—

> *Benton* v. *Woolsey*, 12 Pet. 27.
> *Maryland* v. *Baldwin*, 112 U. S. 490.
> *Tennessee* v. *Hill*, 60 Fed. 1005.

Has the United States a pecuniary interest in this litigation? No better résumé of the salient facts which impel to the conclusion that it has such an interest can be given than that statement of the nature of the Spruce Production Corporation made by this Court in the *Clallam County case*, *supra*. There Mr. Justice Holmes said:

> In August, 1918, this corporation was organized under the laws of Washington. The stock except seven shares for the trustees of the corporation was subscribed for by the United States and those shares were controlled by the United States and all property and

dividends accruing from them were assigned to the United States. The United States conveyed to the corporation the lands and property now sought to be taxed and a partially performed contract under which these lands were to be acquired and a sawmill and logging railroad were to be built. The corporation issued bonds that were all taken by the United States for cash or in payment for the property conveyed to the company. It proceeded to complete the railroad and mill and to get materials for aircraft for the use of the United States in the war and its activities "were wholly directed to the government's program of production of aeroplane lumber." After the armistice these activities have been directed to liquidating the corporation's affairs, although to accomplish it some further contracts have been made, but, as we understand, solely for that end. The regulations of the Chief of Air Service appointed under the National Defence Act provide for administrative supervision of the liquidation under the Secretary of War.

In short the Spruce Production Corporation was organized by the United States as an instrumentality for carrying on the war, all its property was conveyed to it by or bought with money coming from the United States and was used by it solely as means to that end, and when the war was over it stopped its work except so far as it found it necessary to go on in order to wind up its affairs. When the winding up is accomplished there will be

> a loss, but whatever assets may be realized will go to the United States.
>
> * * * * *
>
> Not only the agent was created but all the agent's property was acquired and used, for the sole purpose of producing a weapon for the war. This is not like the case of a corporation having its own purposes as well as those of the United States and interested in profit on its own account. The incorporation and formal erection of a new personality was only for the convenience of the United States to carry out its ends.

Upon these facts the Court held that the property of the Corporation was immune from taxation by the State.

The contracts involved in this cause were entered into after the Armistice and, as heretofore shown, undoubtedly form a part of those "further contracts" which this Court has said were made in the process of liquidation which is being carried on under the administrative supervision of the Secretary of War. As the United States is practically the sole stockholder in the Corporation, and as "whatever assets may be realized" upon the liquidation "will go to the United States," is not the interest of the United States in diminishing "the loss" to the Federal Treasury which will occur "when the winding up is accomplished" sufficiently pecuniary in character as to give it a standing as a party plaintiff in this action? It can hardly be disputed that if the legal title to the property sold to the defendant Erickson and to

the railroad used by him had been in the name of the United States, it alone could have instituted this action. (*Dugan* v. *United States, supra.*) If the property of the Corporation is, for all practical purposes, so far that of the United States as to partake of its immunity from State taxation (as this Court held in the *Clallam County Case*), will not this Court ignore the fact that this instrumentality of the Federal Government wears the habiliments of a corporate entity, it being none the less, as this Court has said, an "instrumentality" and indeed the property of the United States.

The theory that a corporation is a legal entity, separate from the persons composing it, is, says Ruling Case Law, vol. 7, page 27, a "mere fiction, introduced for purposes of convenience and to subserve the ends of justice." It "can not be urged to an extent and purpose not within its reason and policy, *and it has been held that in an appropriate case, and in furtherance of the ends of justice, a corporation and the individual or individuals owning all its stock and assets will be treated as identical,*" citing *Gadsden First Nat. Bank* v. *Winchester*, 119 Ala. 168; *Swift* v. *Smith*, 65 Md. 428; *Pott* v. *Schmucker*, 84 Md. 535.

In *Chicago, M. & St. P. Ry.* v. *Minn. Civic Assn.*, 247 U. S. 490, 500–501, this Court declared:

> Much emphasis is laid upon statements made in various decisions of this court that ownership, alone, of capital stock in one corporation by another, does not create an identity of corporate interest between the two companies, or render the stockholding company the owner of the property of the other,

> or create the relation of principal and agent or representative between the two. * * *
>
> While the statements of the law thus relied upon are satisfactory in the connection in which they were used, they have been plainly and repeatedly held not applicable where stock ownership has been resorted to, not for the purpose of participating in the affairs of a corporation in the normal and usual manner, but for the purpose, as in this case, of controlling a subsidiary company so that it may be used as a mere agency or instrumentality of the owning company or companies. *United States* v. *Lehigh Valley R. R. Co.*, 220 U. S. 257, 273, and *United States* v. *Delaware, Lackawanna & Western R. R. Co.*, 238 U. S. 516. In such a case the courts will not permit themselves to be blinded or deceived by mere forms of law but, regardless of fictions, will deal with the substance of the transaction involved as if the corporate agency did not exist and as the justice of the case may require.

Only recently, as we have seen, the Court in the *Clallam County case*, *supra*, looked behind the corporate existence of the very instrumentality involved in this action and held that a taxation of its property would, in effect, be a taxation of the property of the United States.

Also, in the case of *United States Grain Corporation* v. *Phillips*, 261 U. S. 106, the Court recognized that gold bullion shipped by the Grain Corporation, of which the United States is the sole stockholder, was in substance the property of the United States, Mr.

Justice Holmes saying (p. 113): "We must look not at the legal title only but at the facts beneath forms."

And in *United States* v. *Walter*, 263 U. S. 15, the Court held that a fraud against the Emergency Fleet Corporation, in which the United States owns all the stock, was a fraud upon the United States within the meaning of section 37, Criminal Code.

Among the numerous other cases in which the courts have pierced the veil of corporate existence are—

Linn & Lane Timber Co. v. *United States*, 236 U.S. 574;

McCaskill Co., v. *United States*, 216 U. S. 504;

Miller & Lux v. *East Side Canal* Co., 211 U. S. 293;

Cleveland Cliffs Iron Co. v. *Arctic Iron Co.*, 261 Fed. 15;

Hunter v. *Baker Motor Vehicle Co.*, 225 Fed. 1006, aff'd. 238 Fed. 894;

Westinghouse Electric & Mfg. Co. v. *Allis-Chalmers Co.*, 176 Fed. 362;

Interstate Tel. Co. v. *Baltimore & O. Tel. Co.*, 51 Fed. 49, aff'd. in 54 Fed. 50;

Frick v. *Webb*, 281 Fed. 407.

See also—

Commonwealth v. *Westinghouse Airbrake Co.*, 251 Pa. 12;

Auditor General v. *Regents*, 83 Mich. 467;

Tulane v. *Board*, 38 La. Ann. 292;

Board of Trustees v. *Champaign County*, 76 Ill. 184;

Fletcher, Cyclopaedia of Corporations, Vol. 1, pp. 55–66 and numerous cases there cited.

(*b*) While the United States has a pecuniary interest in this litigation, it is well settled that its right to sue is not limited to cases in which it has such an interest. It may, for instance, sue to protect the interests of private individuals where it is under some obligation to those individuals. (*United States Fidelity & Guaranty Co.* v. *Kenyon*, 204 U. S. 349.) It may also sue to protect the interests of the general public. Thus in the *Debs case*, 158 U. S. 564, this Court said (p. 584):

> Every government, entrusted by the very terms of its being with powers and duties to be exercised and discharged for the general welfare, has a right to apply to its own courts for any proper assistance in the exercise of the one and the discharge of the other, and it is no sufficient answer to its appeal to one of those courts that it has no pecuniary interest in the matter. The obligations which it is under to promote the interest of all, and to prevent the wrongdoing of one resulting in injury to the general welfare, is often of itself sufficient to give it a standing in court.

See also—

United States v. *San Jacinto Tin Co.*, 125 U. S. 273, 286;

United States v. *Bell Telephone Co.*, 128 U. S. 315;

United States v. *Bell Telephone Co.*, 167 U. S. 224;

United States v. *Rickert*, 188 U. S. 432, 444;

Cramer v. *United States*, 261 U. S. 219.

United States v. *Allen*, 179 Fed. 13, 15–21.

In the first *Bell Telephone case* referred to (128 U. S. 315), which was a suit by the United States to set aside patents for an invention on the ground that they had been obtained by fraud, it was claimed that the United States had no pecuniary interest in the subject matter of the suit, and therefore could not be held to question the validity of the patents. This contention was overruled, however, the Court holding (p. 367) that "the essence of the right of the United States to interfere" in the case was "its obligation to protect the public from the monopoly of the patent which was procured by fraud."

And in a case of a similar nature between the same parties appearing in 167 U. S., page 224, the Court said (pp. 265, 266):

> Now, in the case at bar the United States has no proprietary or pecuniary interest. The result, if favorable to it, would put no money in its Treasury or property in its possession. It has a standing in court either in the discharge of its obligation to protect the public against a monopoly it has wrongfully created, or simply because it owes a duty to other patentees to secure to them the full enjoyment of the rights which it has conferred by its patents to them.

A fortiori, it must be true that when the United States has, as in the instant case, a proprietary and pecuniary interest, it may sue in its own name.

In *United States Fidelity Company* v. *Kenyon*, 204 U. S. 349, the Court held, in a suit brought by the

United States for the benefit of a materialman on a bond given by a contractor in pursuance of certain Acts of Congress, that the United States was a real litigant and not a mere nominal party and therefore that the Circuit Court of the United States had jurisdiction of the suit regardless of the value of the matter in dispute. The Court said (pp. 356, 357):

> The United States is not here a merely nominal or formal party. It has the legal right, was a principal party to the contract, and, in view of the words of the statute, may be said to have an interest in the performance of all its provisions. It may be that the interests of the Government, as involved in the construction of public works, will be subserved if contractors for such works are able to obtain materials and supplies promptly and with certainty. To that end Congress may have deemed it important to assure those who furnish such materials and supplies that the Government would exert its power directly for their protection. It may well have thought that the Government was under some obligation to guard the interests of those whose labor and materials would go into a public building. * * * We repeat, the present action may fairly be regarded as one by the United States itself to enforce the specific obligation of the contractor to make prompt payment for labor and materials furnished to him in his work. There is therefore a controversy here between the United States and the contractor in respect of that matter. The action is none the less by the Government as

> a litigant party, because only one of the persons who supplied labor or materials will get the benefit of the judgment.

In *Cramer* v. *United States*, 261 U. S. 219, the United States, on behalf of three Indians, sought the cancellation of a patent issued in 1904 to a railroad company so far as the patent purported to convey certain land which the Indians had occupied as squatters continuously since about 1859. The contention was earnestly pressed that (pp. 221, 222)—

> Their [the Indians] claim is not based on occupancy initiated under any law of the United States; it is simply such adverse claim as any citizen might make to land patented to another. The United States was neither legally nor morally bound to maintain them in possession of lands to which they made no claim prior to that of the Government; and since the United States has conveyed its title, what circumstance has arisen to impose upon it any obligation to the Indians with reference to these lands? True, the Government may owe the Indians the duty of protection, shelter and sustenance; but even that may be questioned where the Indians have adopted the civilized mode of life and have not availed themselves of the protection and care afforded them by the Government reservations. The failure of this action by virtue of the Government's lack of interest is well supported by precedent.

The Court, through Mr. Justice Sutherland, said (pp. 232, 233):

> The contention that the United States was without authority to maintain the suit in the capacity of guardian for these Indians is without merit. In *United States* v. *Kagama*, 118 U. S. 375, 383, 384, the general doctrine was laid down by this Court that the Indian tribes are wards of the nation, communities dependent on the United States. "From their very weakness and helplessness, so largely due to the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power." This duty of protection and power extend to individual Indians,even though they may have become citizens. *United States* v. *Nice*, 241 U. S. 591, 598, and cases cited; *Heckman* v. *United States*, 224 U. S. 413, 436; *United States* v. *Gray et al.*, 201 Fed. Rep. 291; *United States* v. *Fitzgerald*, 201 Fed. Rep. 295. In *United States* v. *Gray*, *supra*, the capacity of the United States to sue for the breach of a lease made by an Indian allottee was asserted and upheld. After pointing out the fact that it was the policy of the Government to protect all Indians and their property and to teach and persuade them to abandon their nomadic habits the court said: "The civil and political status of the Indians does not condition the power of the government to protect their property or to instruct them. Their admission to citizenship does not deprive the United States of its power, nor relieve it of its duty. . . ." In *United*

States v. *Fitzgerald*, *supra*, it was held that the United States had capacity to sue for the taking of personal property from an Indian held by him subject to the management of an Indian agent, on the ground, among others, that such taking obstructs the execution of its governmental policy. At page 296 the court said: "The United States may lawfully maintain suits in its own courts to prevent interference with the means it adopts to exercise its powers of government and to carry into effect its policies. It may maintain such suits, although it has no pecuniary interest in the subject matter thereof, for the purpose of protecting and enforcing its governmental rights and to aid in the execution of its governmental policies." Congress may, if it thinks fit, emancipate the Indians from their wardship wholly or partially, *United States* v. *Waller*, 243 U. S. 452, 459, but in respect of the Indians here concerned that has not been done. It results, from the conclusion we have reached to the effect that these Indians had occupied the lands in dispute with the implied consent of the United States and in accordance with its policy, that the United States sustains such a relation to the subject matter and persons that its authority to maintain the suit cannot be questioned.

Are not the public interests as much involved in this case as they were, for instance, in the *Cramer case*. Here is a Corporation which would never have come into being had not Congress spoken. It was born of the war power of Congress. All of its incorporators

were officers of the United States Army and acted as such incorporators only on behalf of the Government. Every share of stock except seven was subscribed and paid for by the United States, and even those seven shares were held by the trustees of the Corporation in such a way that not one penny of profit, if any there might be, could accrue to them, but only to the United States. Those trustees are removable upon a vote of the majority of the outstanding shares, which means that they are removable at the will of the Federal Government. None of the trustees received any compensation for their services as such. Practically all of the personnel of the Corporation, from the President down, are either Army officers or enlisted men. Every activity of the Corporation has been performed either under the direction of or in accordance with instructions issued by the Secretary of War or his subordinates. Every dollar of capital used by the Corporation in its operations has been furnished by the United States. Contracts which the Government had relating to lumber used in the production of aircraft, as well as that in connection with the logging railroad concerned in this suit, were turned over to the Corporation. The Corporation has never engaged in commercial business of any kind and all of its activities up to Armistice Day were devoted exclusively to the carrying on of the war, and since that time it has been undergoing liquidation. No one except the United States will receive anything out of this liquidation. Surely the public, whose money has so unsparingly been poured into the coffers

of this Corporation, has an interest in bringing back into the Federal Treasury the greatest sum that can be realized out of the liquidation of the assets of its instrumentality, and is not the Government of the United States in duty bound to its people to see that this is done? If this is not a sufficient interest to warrant the presence of the United States as a plaintiff, the cases cited above can not mean what they plainly say.

II.

The Spruce Production Corporation is an instrumentality, and as such an integral part, of the United States. Therefore, it is the "United States" for jurisdictional purposes under Section 24 of the Judicial Code.

Even if this Court should conclude that the United States was unnecessarily joined as a plaintiff, the question still remains whether the Spruce Production Corporation, being but an "instrumentality" of the United States, is not for jurisdictional purposes the "United States" within the meaning of Section 24 of the Judicial Code. This provision, which insures to the United States the substantial right to determine its own rights and obligations in its own courts, is a part of the historic policy of this country and runs back to the Judiciary Act of 1789. Its obvious purpose was, as stated, to give the United States in all its departments and instrumentalities the right to implead or be impleaded in its own courts and not in the State courts, for when the Judiciary Act of 1789 was passed there was reason to apprehend a spirit of hostility in State courts toward the new central Govern-

ment, a danger which in some local courts has not wholly passed away. The statute should therefore be liberally construed to effectuate the great public purpose which it had in mind—a public purpose which at the time when the Judiciary Act of 1789 was passed was reasonably regarded as of vital importance to the new Government.

When, therefore, that Government provided in its first legislation that the Federal courts should have jurisdiction whenever the "United States" was a party, the words "United States" were not used in any narrow sense as referring only to the whole of the Government as a technical entity and not to a part thereof. Indeed, it may be questioned whether the name originally was anything more than a description of a "union" of the colonial states, but the use of the phrase "the United States" in the Constitution naturally made it its corporate title. Instead of being merely descriptive of a union of the States, it became the appropriate title of a new corporate entity—the Federal Government. That this was not at first regarded as the adoption of a technical title to a new corporate entity is somewhat indicated by the fact that in Article I, Section 2, the framers went back to the old name descriptive of the great alliance of the States, when they said: "Representatives and direct taxes shall be apportioned among the several States which may be included within this *Union* according to their respective Numbers," etc. Originally the great alliance was called the United Colonies. Then it was called the Union, and in the Constitution

generally "The United States," and in this way the corporate title of the Federal Government became "The United States of America." Accordingly Congress has directed that the coins of the country shall bear the inscription "United States of America" (Revised Statutes, Sec. 3517), although in referring to the seal, it speaks of the seal of the "United States." (R. S. Sec. 1793.)

This difference between a mere descriptive term and a technical title must be borne in mind when the judiciary clause is considered; and, bearing in mind the broader interpretation of the phrase, it seems to me a fair argument that by the "United States" in the Judiciary Act was meant not merely the technical title to the corporate totality of the Government but included all the parts of the Federal Government, and, thus interpreted, the phrase the "United States" means, if the great purpose of the policy is to be served, that any part of the Federal Government, whatever its legal form, is for the purposes of jurisdiction "The United States."

I do not mean to suggest that an agency of the Government which has an independent existence from the Government is the "United States." For example, the United States may employ a mail contractor or grant franchises to a railroad to carry the mails. These are but agencies of the Government, enjoying a separate existence, and therefore are not the United States even though they subserve a Federal governmental purpose.

In this case, however, the Spruce Production Corporation was an integral part of the Government. This Court has said that it is one of its "instrumentalities." Whatever its corporate form, it was as much the United States as the Interstate Commerce Commission or the Department of Justice. It was for this reason that this Court held that it was exempt from State taxation.

When, therefore, this Federal instrumentality finds it necessary to litigate its rights, the great purpose of this historic policy of the Government would be defeated if the Spruce Production Corporation, representing the United States *and being a part thereof*, could not go into the courts of the United States.

The Constitution (Article III, section 2) extended the judicial power of the Federal Government to "controversies to which the United States shall be a party" and the Judiciary Act of 1789 gave the District Courts jurisdiction of "suits at common law where the United States [shall] sue" (1 Stat. 73, 77). To give the expression "suit brought by the United States" in section 24 of the Judicial Code a meaning which would limit it to a suit where the United States was actually named *eo nomine* as a party plaintiff would be to ignore the remedial object it was intended to accomplish. Manifestly that object was to allow the Federal Government to use its own courts, if it so desired, in the prosecution of litigation in which it might have an interest. (See *In re Debs*, 158 U. S. 564, 584.)

To assert that where an instrumentality created by the Federal Government exclusively for war purposes sues upon a contract made by that instrumentality in pursuance of the liquidation of its property (all of which was likewise devoted solely for producing "a weapon for the war" and has been held to be, in effect, the property of the Federal Government, *Clallam County Case, supra*), the suit is not in reality one brought by the United States, is to prefer form to substance. This the Court has many times held it would not do. (See cases heretofore cited.) For example, as long ago as 1838 in a suit filed by a Federal District Attorney in his own name in a United States District Court to enforce a mortgage given to the United States, this Court ruled that the District Court had jurisdiction because the suit was in substance one by the United States. (*Benton* v. *Woolsey*, 12 Pet. 27.)

If then the present suit had been brought only by the Spruce Production Corporation and if in that condition it might be considered as one brought by the United States, *a fortiori* the same result would follow where the United States has been actually joined as a party plaintiff.

Cases relied upon by plaintiffs in error are not controlling.

It is true that in the *Clallam County case* the District Court had based its jurisdiction upon the ground that the United States was a proper party. (283 Fed. 645, 646.) But by no stretch of the imagination can it be said that this Court ruled to the contrary in its answer to the query of the Circuit

Court of Appeals as to whether the District Court had jurisdiction of the suit. All that can be said is that this Court chose to rest the jurisdiction of the District Court on another ground upon which that court could have entertained such jurisdiction—that the case was one arising under the Constitution of the United States. The question presented here was therefore not directly passed upon by this Court in that case. But what the Court said there concerning the character of this Corporation as being a mere agent "for the sole purpose of producing a weapon for the war" affords a convincing answer to the assertion that the United States is not a proper party plaintiff to this litigation.

Neither is there anything in the *Sloan Shipyards case* (258 U. S. 549) which militates against the presence of the United States as a plaintiff in this action, for the Government does not here claim that the Spruce Production Corporation may not have brought suit on the contracts in its own name alone, or that the United States is an indispensable party to the litigation.

It is true that in the *Wood case*, argued and decided with the *Sloan Shipyards case* (258 U. S. 570), it was held that a claim in bankruptcy made by the Fleet Corporation in its own name as an instrumentality of the Government was not entitled to preference as a claim by the United States. But the Government does not assert here that it has the technical legal title to the property of the Spruce Production Corporation. It merely says that because

that Corporation was created as its mere instrumentality for war purposes and because it is the owner of practically all of the stock of that instrumentality, the property of the Corporation is *in effect* its property. Consequently it believes it had a right to go into court as a plaintiff to protect its interest in a suit upon a contract whereby a part of that property was sold and another portion of it used in connection with the sale—a contract made by its instrumentality for liquidating property which had been used as a "weapon for the war." For all that appeared when the present action was commenced, or now appears, the dissolution of the Corporation and the winding-up process might be complete before a judgment could be collected. Common prudence dictated that the United States should be a party to protect itself against that contingency.

Curtner v. *United States* (149 U. S. 662) contains nothing contrary to the position of the Government. That case merely decided that under the circumstances present therein the United States had no interest, pecuniary or otherwise, in a suit to set aside certain land patents, and that as a suit by the parties for whose benefit the action was brought would have been barred by laches the same thing should apply to the suit by the Government. The Court, however, expressly recognized that if the Government has some pecuniary interest in a litigation, or is under some obligation to the public, it may sue (p. 672).

Those cases, like *New Hampshire* v. *Louisiana*, 108 U. S. 76, where it has been held that a State may not volunteer to collect the private debts of its citizens and thus invoke the original jurisdiction of this Court, are not applicable here, for the very good reason that the United States is not a volunteer nor is it without interest in this controversy. Its interest is direct and the need for its presence as a party in this suit—a step in liquidation—is plainly apparent.

III.

The case arises under the laws of the United States.

Assuming, for the sake of argument, that the United States is not a proper party plaintiff in this suit, the District Court would still have had jurisdiction, as the case is one arising under the laws of the United States.

While the Spruce Production Corporation was organized directly under the laws of the State of Washington, nevertheless it came into being pursuant to a Federal law which restricted it exclusively to serving the national needs. Besides limiting its purposes and activities, that law provided for the control of its operations by the United States through the ownership by the latter of "not less than a majority of the voting stock"; permitted the assignment of Army officers and enlisted men to carry on its work; furnished it with working capital and other valuable properties and rights; and, finally, restricted its life to the duration of the national emergency.

Its power, as a step in liquidation, to make the very contracts involved in this suit was dependent upon Federal law, and that liquidation is being carried on under the administrative supervision of the Secretary of War acting through the Chief of Air Service appointed under the National Defense Act. (*Clallam County case, supra.*)

It thus appears that the power of this Corporation to act at all, as well as its power to make the contracts in suit, was largely determinable by Federal laws.

By way of illustration the language of Chief Justice Marshall in *Osborn* v. *United States Bank*, 9 Wheat. 738, 823, 824, is appropriate—

> Take the case of a contract, which is put as the strongest against the bank. When a bank sues, the first question which presents itself, and which lies at the foundation of the cause, is, has this legal entity a right to sue? Has it a right to come, not into this court particularly, but into any court? This depends on a law of the United States. The next question is, has this being a right to make this particular contract? If this question be decided in the negative, the cause is determined against the plaintiff; and this question, too, depends entirely on a law of the United States. * * * The question respecting the right to make a particular contract, or to acquire a particular property, or to sue on account of a particular injury, belongs to every particular case, and may be renewed in every case. The question forms an original ingredient in every cause. Whether it be, in

> fact, relied on or not, in the defense, it is still a part of the cause, and may be relied upon.

While the United States Bank was organized directly under a Federal statute, this Court in the *Sloan Shipyards case*, 258 U. S. 549, said, as to suits against the Emergency Fleet Corporation, which was organized under the laws of the District of Columbia (p. 568):

> It is suggested that there will be lack of uniformity if suits can be brought in State Courts. This consideration can not control our conclusion from the statutes. But it is not very serious since such suits against this Corporation can be removed to the Courts of the United States, *Pacific Removal Cases*, 115 U. S. 1 * * *.

A ruling to the same effect was made in *Atlantic Corporation* v. *Emergency Fleet Corporation*, 286 Fed. 222.

If a suit against the Emergency Fleet Corporation may be removed to a Federal court on the ground that the case is one arising under the laws of the United States, does it not follow that a suit by the Spruce Production Corporation is one of the same character? The Federal characteristics of such corporations and the Federal laws involved in cases brought by or against them are found in those Acts of Congress directing that they be organized and providing their powers rather than the laws of the particular jurisdiction under which their charters may be issued.

The following are some of the classes of cases which the Federal courts have held arise under the laws of the United States: Suit against a railway corporation organized under Act of Congress (*Texas & Pacific Ry. Co.* v. *Cody*, 166 U. S. 606); suits by or against receivers of national banks (*Bartley* v. *Hayden*, 74 Fed. 913; *Thompson* v. *German Ins. Co.*, 76 Fed. 892); suits upon bonds given by the officers of national banks for the faithful performance of duties (*Walker* v. *Windsor Natl. Bank*, 56 Fed. 76); suit upon the bond of a Marshal of the United States (*Feibelman* v. *Packard*, 109 U. S. 421); suits upon bonds for the execution of governmental contracts (*Mullin* v. *United States*, 109 Fed. 817; *United States* v. *Axman*, 152 Fed. 816); and suits upon bonds taken in actions pending in the Federal courts (*Files* v. *Davis*, 118 Fed. 465; *Tullock* v. *Mulvane*, 184 U. S. 497).

It would seem that the Federal laws are as much involved in this suit as in any of those which have just been enumerated.

CONCLUSION.

The District Court had jurisdiction of this suit, and its judgment should be affirmed.

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JAMES B. KERR,
Of Counsel.
FEBRUARY, 1924.

○

the defendants were citizens of the same State and the United States not a necessary or proper party, was rightly overruled. *Id.* Affirmed.

ERROR to a judgment of the District Court, to review only the question of jurisdiction, in an action on contracts.

Mr. Corwin S. Shank, with whom *Mr. Henry F. McClure* was on the brief, for plaintiffs in error.

Mr. Alfred A. Wheat, Special Assistant to the Attorney General, with whom *Mr. Solicitor General Beck, Mr. W. Marvin Smith, Mr. Charles H. Carey* and *Mr. James B. Kerr* were on the brief, for defendants in error.

MR. JUSTICE MCKENNA delivered the opinion of the Court.

Action by the United States and United States Spruce Production Corporation, praying judgment against C. J. Erickson in the sum of $56,679.35, and against the United States Fidelity and Guaranty Company in the sum of $56,679.35, the ground of recovery being alleged breaches of certain contracts entered into between the Spruce Corporation and Erickson for the sale of certain logs belonging to the Spruce Corporation.

There was a motion to strike out certain allegations of the complaint, and being overruled, the complaint was demurred to. The demurrer and the motion to strike out were upon the ground that it appeared upon the face of the complaint that the court had no jurisdiction of the subject matter of the action. The demurrer was overruled. An answer was then filed, and a reply thereto. In the answer there was also a denial of jurisdiction.

Upon the issues thus made a jury was impaneled to try, which rendered a verdict, fixing the recovery against Erickson at $45,710.70, and against the Fidelity and Guaranty Company in the sum of $20,000. For these sums judgment was entered.

Accompanying the writ of error is the certificate of the district judge that a question of jurisdiction arose in the case. The certificate recited that on the motion to strike out and upon the demurrer the defendants raised the question of the jurisdiction of the court as a federal court to hear and determine the cause "and asserted that the United States of America was neither a necessary nor proper party to the said action," it being one "founded on contract between a corporation organized under the laws of the State of Washington on the one part and a citizen and resident of the State of Washington on the other part, the said court was without jurisdiction to hear and determine the same, but this court in consideration of the allegations and facts" of the complaint "was of the opinion that it had jurisdiction to hear and determine the case."

Even a summary of the facts of the certificate would be somewhat long. Fortunately, we may dispense with it as the elemental facts are sufficiently set forth in *Clallam County* v. *United States*, 263 U. S. 341.

Reference to that case is satisfactory to plaintiffs in error, they conceding that the connection of the United States with the litigation can be completely and accurately stated in the language of the *Clallam Case* by adding the following quotation from the case: "In short the Spruce Production Corporation was organized by the United States as an instrumentality for carrying on the war, all its property was conveyed to it by or bought with money coming from the United States and was used by it solely as means to that end, and when the war was over it stopped its work except so far as it found it necessary to go on in order to wind up its affairs. When the winding up is accomplished there will be a loss, but whatever assets may be realized will go to the United States."

In addition, it is only necessary to say that the Spruce Production Corporation is a corporation of the State of Washington. Erickson is a citizen of the State of Wash-

ington, and a resident of the Western District of the State, Northern Division. The Fidelity and Guaranty Company is a corporation of the State of Maryland.

The matter in dispute exceeds $3,000, exclusive of interest and costs. The United States joined as plaintiff to protect its asserted interests.

In connection with the petition for a writ of error, the errors assigned are based on the action of the District Court and noted in its certificate, and that the "court was without any jurisdiction whatsoever to enter any such judgment."

There is no question of the merits of the case or of the judgment. In other words, the question of jurisdiction is alone before us for decision and, the letter of the complaint being regarded, there is no doubt of the jurisdiction of the Court, for the first subdivision of § 24 of the Judicial Code expressly gives the District Court jurisdiction of suits brought by the United States. This is such a suit. The United States is one of the plaintiffs and joined in the suit by way of asserting and seeking to enforce a right in which it claims to have a direct and legal interest. Judged by the complaint, the claim made by the United States is not frivolous or wholly without support but is real and substantial. In other words, it calls for consideration and determination. This involves an exercise of jurisdiction, whether the ultimate decision sustains or rejects the claim. Jurisdiction is power to decide the case either way, as the merits may require. *The Fair* v. *Kohler Die Co.*, 228 U. S. 22, 25; *Geneva Furniture Co.* v. *Karpen & Bros.*, 238 U. S. 254, 258; *Louisville & Nashville R. R. Co.* v. *Rice*, 247 U. S. 201, 203; *Hart* v. *Keith Exchange*, 262 U. S. 271, 273.

That another party joins in the suit does not take from it its status as a suit brought by the United States.

It follows that the ruling of the District Court sustaining the jurisdiction must be, and it is

Affirmed.

ERICKSON ET AL. *v.* UNITED STATES AND UNITED STATES SPRUCE PRODUCTION CORPORATION.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON.

No. 125. Argued February 20, 1924.—Decided March 3, 1924.

1. A suit brought by the United States in the assertion of a substantial claim is within the jurisdiction of the District Court under § 24 of the Judicial Code, whatever the decision on the merits. P. 249.
2. Where the United States joined with the United States Spruce Production Corporation (a federal war instrumentality, cf. *Clallam County* v. *United States*, 263 U. S. 341,) in an action on contracts made by the latter with the defendants, *held* that the case had the jurisdictional status of an action by the United States, irrespective of the merits of its claim, and that objection to the jurisdiction on the ground that the Corporation and one of